



THIS IS OUR FIRST HALF YEARLY LEGAL WRITINGS KNOWN AS "LEGAL INSIGHT", A PART OF OUR LEGAL INITIATIVE. BELOW WE HAVE ANALYSED THE MAJOR EVENTSⁱ AND CHANGES IN LAWSⁱⁱ THAT TOOK PLACE IN BANGLADESH OR GLOBALLY, HAVING SOME IMPACT ON BANGLADESH, IN THE LAST SIX MONTHS. WE HAVE ANALYSED IT FROM A LEGAL PERSPECTIVE. WE HAVE COVERED AREAS WHICH ARE RELATED TO OUR [practice areas](#). WE HAVE NINE PRACTICE DEPARTMENTS, COVERING 31 PRACTICE AREAS, HENCE WE HAVE SUMMARIZED OUR FINDINGS UNDER 9 HEADINGS AS BELOW. WE HOPE THAT YOU WILL FIND IT HELPFUL. IF YOU HAVE ANY COMMENT, PLEASE LET US KNOW.

Commercial

Since the opening of North America and European market, Bangladesh RMG exporters are now witnessing increase in demand. During the period of COVID-19 outbreak in the year 2020, we have witnessed several incidents of cancellations of order, rejection, discounting as well as non-payment after taking delivery of cargo, caused due to declaration of bankruptcy. In order to avoid such risks arising from such or similar events a prudent exporter should review the contracts and incorporate relevant terms and conditions in the proforma invoices and sales contract.

In another note, for RMG sector, the issue involving giving separate REX number to each unit of a company having a company TIN must be understood from local and international law perspectives. Detailed analysis of the matters is very important for retaining of the GSP and integration with ever-increasing paperless trade practice.

While spinning and weaving companies are recently allowed to manufacture on subcontracting basis,



the risks involving several compliances, maintaining quality, supply and safety of raw materials etc. and issues involving certification, ownership, supervision, control and origin etc. can only be ensured by drafting a tailor-made agreement.

Construction

Several major infrastructure projects are under construction in the country e.g. economic zones, high tech park, power plants, rail, roads and bridges. Failure to comply with any local laws and regulations makes a contract void, which means there is no contract. The problems are usually identified when the contractor applies for relevant license. Failure to comply with license requirement or failure to obtain required license, makes a contract void because it is noncompliance of law. Most government contracts assumes that contractors/ bidders are aware of local laws and regulations and visited the site. The problems can occur in all projects including G2G, PPP and Non- PPP projects. Government document often do not flag all potential issues and risks, it is the duty of the bidder to visit the site and thoroughly understand potential risk. It is very important to evaluate the tender document/study report etc. from legal perspectives and review the local laws and regulations impacting the project before submitting for the bid or signing contract.

Covid related delay has increased the cost of construction. However not all construction agreement allows price adjustment although most of them allows time extension due to force majeure. It is important to review the entire agreement from different angle to establish or deny an argument that the employer is required under contract to allow price adjustment.

Corporate

Many companies preferred voluntary liquidation during this pandemic to reduce cost. Few foreign branch/liaison offices are considering the possibility to close business. While a very limited number of M & A transactions took place. Merger helps to develop R & D capabilities, reduce cost, etc. AI, Technological capacity enhancement is now making the buyers more dependent on technology and less on labor cheap labour. Selection of suitable corporate restructuring or exit plan depends on various factors, which requires a detailed legal due diligence exercise.

Many companies declared lay off due to COVID while many preferred simple terminations. Both carries significant risks of litigation due to non-compliance; hence legal compliance is a must.

Dispute resolution

Recently, an hon'ble High Court bench held that although there is a presumption that sufficient



consideration is provided before issuance of a cheque under Negotiable Instrument Act 1881, the presumption is rebuttable one. The accused if can prove, with a balance of probability that there was no consideration for issuance of the cheque & same cannot be disproved by prosecution beyond reasonable doubt, the accused may get acquittal. Hence a supporting agreement while issuing the cheque may play a key role.

Most land, money and title suits, for which appeal to High court was available, now may end up with filing appeal to the District Judge where the value of the original suit is within Tk. 5 (five) crore.

The use of Communication Technology by the Court Act 2000 [Act no. 11/2020] and conduct virtual hearing seems a regular affair now in higher courts like High Court and Appellate Division, while district courts are still struggling to cope with the changes.

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Shipping

The sustainable development goals have pushed the International Maritime Organization to take measures to reduce pollution caused by ships. The idea behind this plan is to urge the ship-owners to improve carbon intensity by at least 40% by 2023 and cut the emission cut by half by 2050.

Navigability difficulties at the Karnaphuli channel and haphazard anchoring of vessel at the outer anchorage caused several collision incidents in recent times. Besides, the faulty handling of the cranes is also responsible for container and cargo damages. Several suits filed in the admiralty court arising from such torts. While taking fraudulent delivery of cargo by producing false documents or delivery of cargo under indemnity seems to have increased in recent time both locally and internationally during this pandemic.

Taxation and Banking

Taxation

Tax

In the current financial year, the corporate tax rate structure has not been changed except that the tax for Non-Publicly Traded Company is reduced by 2.5 percent and fixed at 32.5%ⁱⁱⁱ.

Some new industries are brought under the umbrella of Tax exemption, e.g., electrical transformer, artificial fiber, automobile parts or components manufacturing, automation & robotics design, artificial intelligence-based design and/or manufacturing, nanotechnology-based products manufacturing, aircraft heavy maintenance services including parts manufacturing etc.

Pension and gratuity payment to approved funds will be eligible for exclusion/deduction from total



income of the company. The payments to approved gratuity funds up to Tk 25 million (US\$290,000) per year is subject to such tax deduction. NBR approval requirements requires that the fund be set up as an irrevocable external trust as per Trust laws. For employees, the gratuity income received from such fund is tax exempted. Many companies adopted the changes by constituting a trust and depositing the fund to the trust and recognized the fund with NBR. Failure to recognize the fund, will certainly lead to disputes between the employer and employees as, the employees will end up in paying very high tax on the gratuity income.

Under this financial year, the scope of investment of undisclosed income by paying taxes at the rate of 10% (securities); by paying variable tax rate on investment in land and/ or building and/or cash/bank deposits; by paying variable tax rate on investment in residential buildings/apartments etc., by an individual assesses is extended.

Besides, computation of capital gains from the transfer of business or undertaking has been newly decided. This will have impact on the M&A transactions. Income earned from alternative investment fund recognized by BSEC will be excluded from total income.

VAT

All limited companies are now required to mandatorily submit the Annual Financial Statement for the purpose of proper audit. This will require consolidation of all monthly returns to be filed again annually.

Advance Tax (AT) has been proposed to decrease from 4% to 3% for import of raw materials for industries. Advance Tax (AT) exemption facility is proposed on thresher machine, power reaper, power tiller, operated seeder, combined harvester, rotary tiller, weeder and winnower.

Existing VAT exemption facility for manufacturing are extended; newly added items are blender, juicer, mixer, grinder, electric kettle, rice cooker, multi cooker, pressure cooker, washing machine, microwave oven and electric oven, printer, toner cartridge, inkjet cartridge, parts of computer printer, computer, laptop, AIO, desktop, sanitary napkin etc^{iv}.

In case of VAT evasion, failure or anomaly, the amount of existing fine from reduced to equal amount of revenue from twice the amount of revenue; The monthly rate of interest charged on arrear VAT is reduced from 2% to 1%.

Disputes are increasing from failure to comply with the changed VAT laws and its different applications.

Customs

Provision for Bangladesh Single Window (BSW) is added which shall serve as the single electronic

entry point for documents including certificate, license and permit and a platform for persons involved in import, export, warehousing, transit or trans-shipment of goods. However, the problems involving HS code and valuation related disputes are not likely to be solved with such changes. A large number of disputes can be avoided by importers by simply working on product descriptions and selection of HS codes & not heavily relying on C&F agent for providing such information in the Bill of Entry.

Finance

A new circular issued; the banks are now allowed to transfer funds in the form of placement from one OBU to another. This will help the OBUs ease their liquidity crunch. The central bank allowed local companies (type C) housed in different zones to take loans from OBUs at LIBOR plus 3.5 percent^v, a much cheaper rate subject to permission of central bank. JV are also allowed to take short term loan with approval of central bank. Pre shipment credit from OBU is also allowed.

OBU FOREX liquidity was a major issue in past causing delay in disbursement or even non disbursement of loan amount causing loss to borrower and failure to export on few occasions. This was an issue of major controversy. They should be resolved by the changes made.

Advance payments against permissible imports may also be executed directly by external financiers and/or offshore banking operations of scheduled banks, subject to repayment guarantees irrespective of amount^{vi}. ADs shall observe extended due diligence including KYC and AML/CFT standards. ADs shall also satisfy themselves regarding the enforceability of repayment guarantees.

The moratorium on loan payments is further extended till 30th June 2021 and the borrowers will not be in default. Borrowers who are simply taking the advantage of moratorium and not paying installments at all, are likely to face severe repayment issue and default may increase significantly.

Central bank allowed exporters to ship goods on sales contracts under open account credit terms against discounting usance export bills in foreign exchange within the statutory period from the date of shipment. Payment undertaking/payment risk coverage to be issued by international factoring companies/ foreign banks/foreign financial institutions/trade financiers/insurance entities for settlement of export bills/receivables within the permissible statutory period.

COVID-19 Stimulus Packages extended to Type A, B and C companies operating in EPZ, EZ and HTPA subject to terms and conditions and not to the Type A, B companies who are outside zones till date.

It is said that most people are “convenient environmentalists”^{vii}, as people will make the green choice only if it doesn’t require sacrifice. Refinance schemes issued by sustainable finance department of Bangladesh Bank is aimed to take the pressure off from the entrepreneur while taking green initiative. It is however important to conduct legal due diligence before loan security

documentation so that excessive and harmful security is not surrendered.

On the other hand, there are improvement with CIB classification system, however, it does not provide any breathing space for genuine insolvent companies. As soon as the moratorium period will be over several genuine insolvent companies will face the CIB issues. Case to case basis analysis is required to see if our Constitution and bankruptcy court provide a respite for such genuine insolvent companies.

International

The new Carriage of Goods by Air (Montreal Convention) Act 2020 allowed a passenger's family who is a victim of death/injury caused by an aircraft may now file a case before Bangladesh court under the Act which ratified the Montreal treaty.

Bankruptcy of major buyers during this pandemic puts the sellers at risk as cargo was delivered under the Letter of Indemnity while sellers may have not received the payment from insolvent buyers. A claim before bankruptcy administrator as well as claim against the shipping company may be applicable depending on the facts and circumstances. While due to having no reciprocal laws the local exporters were not been able to declare insolvency or bankruptcy.

Information Technology

Every national and its major infrastructures are now under a potential threat of being hacked as witnessed recently by Colonial Pipeline, USA and forex reserve of central bank of Bangladesh in the recent past. Companies are required to upgrade their security infrastructure and comply with the local security regulations like Digital Security Act of 2018.

It is predicted that as the multinational companies' dependency on technology and innovation has grown during this pandemic, fast-growing emerging markets like Bangladesh that have traditionally been able to attract inward investment based on their cost-competitiveness are in danger of losing out to larger, more technologically developed nations^{viii}. The factors such as the digital readiness of the workforce, the technological environment and protection for intellectual property are the focus now as predicted by Kearney. Integration with high-tech & AI products require sound IT & legal support at every stage e.g., contact signing, importing, determining correct HS code etc.

"The Digital Commerce Management Guideline 2021" is now published as an extraordinary gazette. Its compliance is made mandatory as failure to comply may lead to cancellation of license. Foreign e commerce platform like amazon need to avail permission before doing e commerce in Bangladesh. Besides, agreement between third party seller and marketplace owner is now very essential. No

money lending business can be performed without permission of central bank. The guideline will bring more disclosure of information, quality of product and services as rating system is introduced. While marketplaces are required to concentrate on disclosure, compliance and the terms and conditions of sales.

Investment

The government is developing the country's first industrial park for electrical and light engineering product manufacturers at Munshi Ganj, which could be the beginning to bring the highly scattered and unorganized industries under a single platform. Already 83 percent of the project work has been completed, and the Bangladesh Small and Cottage Industries Corporation (BSCIC) said the industrial city would be ready by June next year.

As stated above several tax benefits of this financial year are associated with light engineering manufacturing. Perhaps it is time for diversification for the established entrepreneurs.

BIDA issued Guidelines for Outward Remittance Repatriation for Payment of Royalty, Technical Knowledge/Technical Know-how Fee(s), Technical Assistance Fee(s), and Franchise Fee(s)-2020 making the process more transparent, secure. The guideline requires signing of agreement and vetting of it by the legal representatives of the parties to the agreement.

New Marine Fisheries act 2020 enacted to provide the legal infrastructure for the fishing operations in the extended Bay of Bengal.

BSEC issued Sukuk & Green bond guidelines. BSEC permitted NGOs named BRAC, Buro Bangladesh and Sajida Foundation to raise funds by issuing bonds^{ix}. BSEC approved BEXIMCO's proposal to issue asset-backed Green-Sukuk bonds.

The Bangladesh Securities and Exchange Commission (Qualified Investors Offer by Small Capital Companies) Rules, 2018 allowed issuance of SME-IPO. Mostafa Metal Industries Ltd. And Nialco Alloys Limited (NAL) are the two companies enlisted for SME-IPO.

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ⁱ Please notify us if we have not covered any important events.

ⁱⁱ Please notify us if we have not covered any important changes in laws.

ⁱⁱⁱ Md. Abdus Satter Sarkar, FCMA, partner, Mahfel Huq & Co.

^{iv} A. Qasem & Co. (AQC)

^v The Daily Star Bangladesh

^{vi} The Financial Express Bangladesh

^{vii} The Green Bundle by Magali A. Delmas and David Colgan

^{viii} The Wall Street Journal

^{ix} The Business Standard