



THIS IS OUR HALF YEARLY LEGAL WRITINGS KNOWN AS "LEGAL INSIGHT", A PART OF OUR LEGAL INITIATIVE. WE HAVE ANALYSED THE MAJOR EVENTS AND CHANGES IN LAWS TAKEN PLACE IN THE LAST SIX MONTHS IN BANGLADESH AND GLOBALLY HAVING IMPACT ON BANGLADESH. WE HAVE ORGANISED IT UNDER NINE HEADINGS AS PER OUR NINE PRACTICE DEPARTMENTS COVERING THIRTY TWO [PRACTICE AREAS](#).

Commercial

The Central bank has tightened rules so that exporters realize their export proceeds within the stipulated period, a move that may increase the supply of the US dollar in the foreign currency market. Some exporters may still fail to comply if they are facing genuine issues with buyers like delay in payment, insolvency, rejection and discounting etc.

The Drug and Cosmetics Bill, 2023 is placed before Parliament to replace the existing Drugs Act, 1940 and the Drugs (Control) Ordinance, 1982. The proposed law incorporates cosmetics into its jurisdiction. It is initially framed for regulating the import, export, manufacturing, and sale of medicines, with provisions of tougher punishments. The bill defines what constitutes a drug or cosmetic and establishes a central regulatory authority, Licensing Authority, to oversee the drug and cosmetics industry. The bill proposed life-term imprisonment and a Tk 10 lakh fine as the maximum punishment for manufacturing medicines without registration or for producing fake medicines, among others.

In preparation for the post-LDC era beginning in 2026, when cash incentives will no longer be permitted under WTO rules, the government has decided to gradually reduce cash incentives for exporters. Despite this reduction move, certain sectors, such as man-made fibre, may still be included for cash incentives to facilitate foreign currency earnings through exports. Despite phasing out incentives, the Prime Minister's Office has already announced that the government will support exporters under different names even after transitioning to a developing country.



The commerce ministry is also reviewing how various developing countries, such as Vietnam, are subsidising its export sectors, said the officials. After graduation different subsidies may be subjected to challenge under SCM Agreements. Non-actionable subsidies are those that are deemed to have no, or minimal, trade-distorting effects. SCM Agreement allows governments to provide subsidies in certain circumstances to help small and medium-sized enterprises (SMEs), there are a number of other WTO agreements that address subsidies, such as the Agreement on Agriculture and the Agreement on Trade-Related Investment Measures (TRIMS). These agreements may impose additional restrictions on government subsidies.

The EU imposed the anti-dumping duty, citing concerns about dumping by Chinese bicycle manufacturers. This can harm domestic producers in the foreign market. The EU's anti-dumping duty on bicycles could make it more difficult for Bangladeshi bicycle manufacturers to compete in the EU market. Bangladesh has not filed a complaint with the World Trade Organization (WTO) yet.

Construction (Projects & Energy)

Energy Efficiency and Conservation Rules, 2016 has been amended to make it all industries using energy to submit an **annual energy report**, expand the scope of energy efficient labeling, encourage businesses and organizations to implement energy management programs, and promote public awareness of energy efficiency and conservation. The rules may be difficult to enforce, especially for small businesses.

In *Abdur Rashid Mullick vs. Rangs Properties Ltd.* The petitioner filed an application under section 7ka of the Arbitration Act, 2001 seeking an order restraining the opposite party from **enjoying the facilities and utilities of the building** until he paid his outstanding dues. The Hon'ble High court confirmed that District court has the jurisdiction to pass the order as the dispute fell within the purview of the Real Estate Development and Management Act, 2010. However, the order was modified on some other grounds.

There are several factors that make Bangladesh an attractive destination for clean energy investment, including a growing market, government support and a favorable investment climate. However, there are also some legal risks associated with investing in clean energy in Bangladesh, such as the lack of a clear regulatory framework etc. In recent times, however, a few **solar and wind projects** have been constructed.

Corporate

In a writ petition, the Hon'ble High Court Division of the Bangladesh Supreme Court has held that the respondents, the National Board of Revenue (NBR) and its officials, have no lawful authority to lock the business identification number (BIN) of the petitioner, a company, for the alleged outstanding liabilities of a third party. The court found that the respondents had locked the petitioner's BIN in a misconceived and illegal attempt to circumvent the provisions of section 59 of the Value Added Tax (VAT) Act, 1991. The court held that the respondents had no legal basis to lock the petitioner's BIN because the petitioner is a separate and distinct corporate entity from third party company. The court directed the respondents to unlock the petitioner's BIN within 30 days of the date of the judgment. The Respondents cannot bring a natural person like the managing director the third-party company and the incumbent managing director of the Petitioner company into this equation and follow him and his other corporate connections with a view to attaching liability to an evidently third-party entity like the Petitioner for recovery of outstanding dues. Both the





Petitioner and the **third-party company are sui juris in law**, that is, they have full legal capacity to act on their own behalf and are not subject to the authority of another.

The Bangladesh Bank (BB) has allowed banks to lend money to **sick industries** at their cost of fund, which is the rate at which banks borrow money from the central bank. The BB has set a maximum interest rate of 12% for these loans. This could expose banks to financial risk if the industries fail to repay the loans.

The Universal Pension Management Act-2023 aims to provide a pension to all citizens of Bangladesh, regardless of their employment status. The universal pension scheme however does not have any provision to incorporate **employers**. This aspect might raise some questions regarding the efficacy of the fund. The act will establish a National Pension Authority (NPA) to oversee the implementation of the act.

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Dispute resolution

The High Court Division, by a judgment and order dated 11.01.2023 allowed the writ petitions and directed the respondents to consider the promotion of the petitioner to the post of Chief Engineer, RAJUK with retrospective effect from the date of his eligibility as he has fulfilled the requisite qualifications prescribed in the Rajdhani Unnayan Kattripokko (Officers and Employees) Service Rules, 2013. The hon'ble court held that to be considered for promotion is a vested right depending on the requisition qualifications under Article 29 of the Constitution of Bangladesh as it guarantees equality of opportunity in public employment for all citizens of Bangladesh even if there is no discrimination at the date of initial appointment of the petitioner.

In Milon and Ors. vs. The State, the court provides guidance on the admissibility of confessional statements in criminal cases. In the judicial confession before the learned magistrate who gave warning to the accused that he is not bound to confess and if he confesses it will be used against him. Besides, the accused was given three hours' time to think by the learned magistrate in the court chamber of the learned magistrate. The Hon'ble Appellate Division considered the said and other circumstances and found that the confession was voluntary.

In Metro Homes Limited vs. Umee Kulsum and Ors., a case where Mr. Mohammed Forrukh Rahman of Rahman's Chambers appeared as a counsel for the respondents, the Hon'ble High Court, while removing the Chairman of the Tribunal, upon his submission, upheld under section 16 of the Arbitration Act 2001 that the arbitration proceedings under the newly constituted tribunal will start from the stage where it had finally been ended.

Shipping

The SOP was signed by the Bangladesh Inland Water Transport Authority (BIWTA) and the Indian Ministry of Shipping outlines the procedures for the movement of goods between Bangladesh and India through the Chattogram and Mongla Ports. The SOP also includes provisions for the clearance of goods at the ports, as well as the transit of goods through Bangladesh.





Marine Fisheries Rules 2023 are a set of regulations that aim to promote the sustainable management of marine fisheries. The rules cover a wide range of topics, including fishery zones, fishing gear, fishing seasons, fish size limits etc. The rule is designed to help ensure the sustainable management of marine fisheries in Bangladesh.

The Department of Environment's decision to classify the shipbreaking industry as red category means that shipbreaking business and yards are now subject to stricter environmental and safety regulations.

World Shipping Council (WSC) expressed concern over the Bangladesh Flag Vessel (Protection of Interest) Rule of 2023. The WSC argued that the rule could violate international maritime law.

Taxation and Finance

Taxation

Tax

Under the Finance Act 2023 a new income tax at source on transferring of property in Bangladesh is payable by the transferor. A new digital services tax will be levied on the income of MNCs that provide digital services to users in Bangladesh. A new tax on cross-border data flows will be levied on the transfer of data between MNCs and their affiliates in other countries.

The Act has imposed an environmental surcharge on car owners. The surcharge will be collected by the Bangladesh Road Transport Authority (BRTA).

The National Board of Revenue (NBR) is considering allowing taxpayers to file their returns at any time, even after deadlines, by paying a penalty for the delay and interest on the payable amount. This would be a welcome relief for taxpayers who may have missed the deadline for filing their returns due to extenuating circumstances.

Under the new Income Tax Act of 2023, the changes are expected to have a significant impact on taxpayers, businesses, and the government. Some of the key changes to the tax code include Increased tax slabs, Increased tax rates on dividends and capital gains, new tax incentives for businesses e.g., increased investment allowance, new tax credit for research and development.

The new law also includes several new tax enforcement measures, such as Increased penalties for tax evasion, increased powers for the tax authorities to investigate tax evasion.





Vat

The section 73 and 85 of VAT Act 2012 has been amended by the Finance Act 2023 to blend the requirement of giving a show cause notice and an opportunity of being heard for both questions involving accuracy of the return etc. (under section 73) and monetary penalties for non-compliances or irregularities (under section 85).

Customs

The Hon'ble Appellate Division held that Section 83A of the Customs Act can be used to collect additional duties and taxes even after the assessment of goods is complete if there is an error or inadvertence in the original assessment. The decision also provides some much-needed certainty for importers, who can now be confident that they will not be subjected to surprise demands for additional duties and taxes after the assessment of their goods is complete. Section 32 of the Customs Act, which deals with untrue statements, errors, etc., is not the only way for the Government of Bangladesh (GoB) to collect additional duties and taxes once the assessment is complete.

The Customs Act, 1969 has been amended by Finance Act 2023 to add a new definition of bill of entry to incorporate ex-bond bill of entry. The Act added a new requirement to submit an ex-bond bill of entry in such form and manner as prescribed. Fifteen days' prior permission is needed from the Commissioner of Customs (Bond), or any other Commissioner of Customs authorized by the Board for clearing the goods to special bonded warehouses for special purposes as defined.

Finance

The Bank Company (Amendment) Act, 2023, made several important changes to the existing law. One of the most significant changes is the definition of "willful defaulter". Under the new law, a willful defaulter is defined as: An individual or company that fails to repay a loan despite having the capacity to do so, or a person who transfers ownership of mortgaged property without taking prior approval from the lender, or a person who uses the loan for different purpose or take loan by furnishing false information.

Two steps process is added, by amending existing section 27 kaka, involving sending list of defaulting borrowers by the banks and financial institutions and then after filtration publishing list of willful defaulters. A right of audience is provided to willful defaulters under the new Bank Company Act Amendment, 2023. This means that willful defaulters have the right to be heard by the Bangladesh Bank before their names are published on the list of willful defaulters. If Bangladesh Bank decides to publish the willful defaulter's name on the list, the willful defaulter will have the right to appeal.

Amongst many other changes existing section 27ka of the Act is also amended to cover more people who need the permission of the lender bank or its board etc. before resigning or transferring the shares from debtor company. The exact word is **পরিচালনা কর্তৃপক্ষের কোন সদস্য**.

The changes will have a far-reaching impact on the future of disputes and the overall recovery landscape.





The Secure Transaction (Movable Assets) Bill 2023 has been placed in Parliament, which would allow businesses and individuals to use movable assets, such as vehicles, machinery, and equipment, as collateral for bank loans.

Banks are allowed to write off bad loans up to BDT 0.5 million without filing cases.

International

International Law

India proposed a free trade agreement with Bangladesh that would cover goods, services, and investment. The two countries are currently in the process of negotiating the agreement. Bangladesh and China held the 11th round of negotiations for a free trade agreement. Bangladesh has suggested exploring the possibilities of Free Trade Agreement (FTA) with Nepal to increase two-way trade.

Bangladesh and the European Union held a few rounds of negotiations for a free trade agreement. The EU's Partnership and Cooperation Agreement (PCA) is still under negotiation, but it is expected to cover a wider range of issues than the current agreement, including climate change, security, and human rights.

The Gambia v. Myanmar case is currently at the merits stage. The Gambia filed a case against Myanmar in the International Court of Justice (ICJ) in November 2019, alleging that Myanmar had committed genocide against the Rohingya people. The case is based on the Genocide Convention, which was adopted by the United Nations in 1948. The ICJ ruled in favor of the Gambia on all three of points i.e., the definition of genocide, the standing of the Gambia to bring the case and the jurisdiction of the ICJ. The Gambia's case alleges that Myanmar's military and other security forces committed genocide against the Rohingya in Rakhine State, Myanmar, in 2016 and 2017. The alleged acts of genocide include mass killings, rape, torture, and the burning of villages. In July 2022, the ICJ ruled that it has jurisdiction to hear the case. The ICJ at the prayer of Myanmar agreed to extend time for further proceedings.

Environmental Law

Environmental Conservation Rules 2023 is published by the Department of Environment. The new rules imposed more stringent regulations on industrial activities, including requiring environmental impact assessments for all new industrial projects and requiring factories to install pollution control equipment. The new rules included new provisions on climate change, such as requiring industries to take measures to reduce their greenhouse gas emissions.

In global context, the General Assembly of the United Nations has requested the International Court of Justice to render an advisory opinion on the obligations of States under international law to ensure the protection of the climate system and other parts of the environment.¹ The Assembly asks the Court to consider the following questions: *What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations?*





The EU has passed a law that requires large companies to disclose climate-related information. This law, known as the Corporate Sustainability Reporting Directive (CSRD).

In the USA, the SEC's proposed climate-related disclosure rules. The rules would require public companies to disclose their climate-related risks and opportunities, including greenhouse gas emissions, climate-related financial risks, and climate-related adaptation and mitigation strategies. The rules are expected to be mandatory for public companies with more than \$100 million in market capitalization.

The International Sustainability Standards Board (ISSB) first two standards were published in 2023. IFRS S1, Disclosure of Sustainability-related Financial Information, sets out the requirements for identifying, measuring, and disclosing climate-related risks and opportunities. IFRS S2, Climate-related Disclosures, sets out the requirements for disclosing climate-related information, including greenhouse gas emissions, climate-related risks, and climate-related opportunities. The ISSB's standards are intended to be used by companies across the globe to report on their climate-related risks and opportunities. ISSB is an independent board established by the International Financial Reporting Standards Foundation (IFRS Foundation) to develop global sustainability disclosure standards.

International Arbitration

In an international arbitration under International Cotton Association rule between a Bangladeshi buyer and a Swiss supplier of cotton, the Tribunal awarded in favor of Bangladeshi buyer. The award was delivered in favor as supplier was in breach of contract by failing to ship the cotton within the contracted shipment period. Bangladeshi Buyer was entitled to cancel the contract and invoice back the difference between the contract price and the market price. The Tribunal awarded Buyer the difference between the contract value and the market value. Rahman's Chambers assisted the Bangladeshi Buyer.

IT & IP

Intellectual Property

The Hon'ble High Court Division has dismissed the writ petition filed by Unilever Bangladesh Limited (UBL) seeking to prevent the importation of parallel goods of Unilever products. The court ruled that there is no wholesale restriction on the importation of parallel goods in Bangladesh. The court also found that UBL does not have a legal right to prevent the importation of parallel goods. The court noted that parallel goods are products that are manufactured by the same company as the authorized goods but are sold in a different market. Parallel goods are often found at a lower price than authorized goods. The court found that the importation of parallel goods can benefit consumers by providing them with lower-priced options. The court also found that the importation of parallel goods does not necessarily harm the **intellectual property** rights of brand owners.

Although section 15(g) of the Customs Act, 1969 prohibits the importation of goods that have been made or produced outside Bangladesh and have a design that is protected by copyright law, however, this provision does not prohibit the importation of parallel imports if the importer has the permission of the copyright holder.





Copyright

OpenAI, Google, etc are in talks with media outlets to sign an agreement over the use of news content to train artificial intelligence (AI) technologyⁱⁱ. News content is often protected by **copyright**, so tech companies need to obtain permission from the **copyright** holder before using it to train AI technology. Media outlets include newspapers, magazines, radio, television, and websites. ⁱⁱⁱ

Information Technology

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Artificial Intelligence

The rule named Provisions on the Administration of Deep Synthesis of Internet-based Information Services issued by the Cyberspace Administration of China (CAC) is now in operation. It is designed to regulate the production and use of deepfakes, which are videos or images that have been manipulated using artificial intelligence to make it appear as if someone is saying or doing something they never did. The rules prohibit the production of deepfakes without the consent of the person whose likeness is being used, and they require that any content created using AI be clearly labeled as such. The rules also state that deepfakes cannot be used to engage in activities that are prohibited by law, such as spreading false information or defaming individuals.

Investment

Capital Market

The Hon'ble High Court Division quashed the suspension of the BO account of two petitioners with a securities company. The Court found that the suspension of the petitioners' BO accounts was arbitrary and illegal as the respondents had not served any show cause notice to the petitioners before suspending their accounts. The court concludes that the commission must have a reasonable basis for its satisfaction before issuing an order under Section 14 of the Depositories Act, 1999. The court also finds that the commission must have considered all relevant considerations. However, the court notes that the Depositories Act, 1999 requires the commission to be "satisfied" before issuing an order, while the Securities and Exchange Ordinance, 1969 only requires the commission to "deem fit" to issue an order. The Court ordered the respondents to unfreeze the petitioners' BO accounts within 7 days from the date of the order and to pay the petitioners Tk. 50,000/- (Fifty Thousand Taka) each as compensation for the inconvenience and financial loss caused to them due to the suspension of their BO accounts.

Foreign Direct Investment

The Tax Act 2023 has been written in simple language and all sources of income have been consolidated chapter-wise. The simple formula has made calculation easier for everyone. Efforts have been made to reduce the arbitrary power of the officers and reduce the cost of doing business in Bangladesh. The conflict with





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International Financial Reporting Standard (IFRS) has also been adequately addressed. Most of the returns will be filed on universal self-assessment. The Act has aligned with international best practices. The refund process has been made simpler.^{iv}

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ⁱ United Nations

ⁱⁱ <https://www.siliconinvestor.com>

ⁱⁱⁱ The Wall Street Journal

^{iv} The Financial Express

