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# NEWS LETTER

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## Bangladesh's Economy to Grow 6.9% in FY22 on Global Trade Rebound - says ADB

Bangladesh's GDP is set to grow 6.9 percent in fiscal year 2021-22 on stepped-up budget spending, a strong expansion in exports and a slight improvement in agricultural output, according to the Asian Development Bank (ADB). Growth will continue to be strong in FY23, edging up to 7.1 percent, but is expected to remain below the pre-pandemic levels due to a slowdown in industrialised economies triggered by disruptions from the Russian invasion of Ukraine, the Manila-based lender said in its latest Asian Development Outlook (ADO 2022). According to ADB Senior Officials, Bangladesh's economy has demonstrated commendable economic resilience in the face of the COVID-19 pandemic, registering GDP growth of 6.9 percent in fiscal year 2021. With 6.9 percent projected growth in fiscal year 2022 and 7.1 percent growth in FY2023, the Bangladesh economy is now moving to a higher growth trajectory.

ADB projects the headline inflation rate to increase to 6 percent in FY2022, from 5.6 percent in the previous year, as price pressures are increasing due to rising global food and fuel prices along with the implementation of stimulus measures. The headline inflation rate steadily climbed from 5.4 percent in July 2021, the first month of the current fiscal year, to 6.1 percent in December 2021, lifted by rising global prices for food and commodities, especially oil. The inflation rate in FY2023 is forecast to dip to 5.9 percent on softer global food and fuel prices

Exports grew 30.3 percent in the first seven months of FY22 after a 1.1 percent contraction in the same period in FY2021, according to the report. There were sharp increases in most export products, with garment exports rising



30.3 percent, while other exports grew at a similar pace on significant expansions in agricultural, leather, and engineering products. With economic growth in Bangladesh's major markets expected to be buoyant, the country's momentum of export growth is expected to continue over the rest of the current fiscal year.

Remittances, another key driver of the economy, fell 19.9 percent in the first seven months of FY2022, reflecting an unusually large 34.9 percent increase in the same period a year earlier, the report noted. The ADB also attributed the dip to the increased use of unofficial channels for money transfers, with the resumption of international travel despite the 2 percent cash incentive being offered by the government since FY20.

Remittances are projected to fall to \$21.8 billion in FY22, down 12.0 percent from FY21. Despite expectations of lower remittances in the current fiscal year, the forecast level is nevertheless well above pre-pandemic FY2019's \$16.4 billion. Remittances in FY23 are projected to rebound to \$23.3 billion, up 6.8 percent, on an additional 0.5 percent increase in the cash incentive and increased government efforts to curb the use of unofficial channels take hold.

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However, lower remittances in FY22 will affect the current account deficit, which is expected to widen to 2.7 percent of GDP from 0.9 percent in FY21. The deficit in FY23 is expected to shrink to 1.8% of the GDP on rebounding remittances and slower import growth. Private investment will get stronger, reflecting solid growth in private sector credit and imports of industrial raw materials and capital goods, according to the report. Growth in private consumption, however, may be affected by a decline in remittances through official channels.

The ADO 2022 says that private investment will get stronger, reflecting solid growth in private sector credit and imports of industrial raw materials and capital goods. With large available funding, public investment will increase to support the implementation of priority large infrastructure projects. Growth in private consumption, however, may be affected by a decline in remittances.

The report also highlights the importance of managing climate change to ensure inclusive and environmentally sustainable growth. As part of developing a national adaptation plan by the government, the ADB called for a climate risk-informed master plan to be drawn up for each sector and development unit. Capacity for better accessing and utilising climate risk analysis needs to be mainstreamed in public financial management decisions across government, it said. Enabling policies are necessary for green investments, the development and adoption of green technologies, and for the greening of existing industries.

The ADB provided a positive outlook for developing Asia, forecast growth of 5.2 percent in 2022 and 5.3 percent in 2023. The report noted that less severe health impact of the omicron variant of COVID-19, coupled

with increased immunity, allowed developing Asia to remain relatively open in early 2022. As a result, regional economies fared better during the omicron wave than previous COVID-19 outbreaks. Manufacturing and services continued to expand in January and February, albeit at a slightly slower pace than in the fourth quarter of last year in some economies.

Although the pace of the recovery varied across subregions, regional growth, in general, is being supported by a robust recovery in domestic demand in economies that are continuing to catch up with their pre-pandemic trend, particularly in South Asia. But the report highlighted several downside risks which could cloud developing Asia's outlook. Escalating global geopolitical tensions arising from the Russian invasion of Ukraine could spill over to the region, particularly via sharper-than-expected increases in commodity prices and heightened financial stability risks.

The Russian invasion of Ukraine has upended the global economic outlook and greatly amplified uncertainty for a world economy still contending with COVID-19, the ADB said. Aggressive monetary policy tightening in the United States could also lead to financial instability. In the medium term, scarring from the pandemic poses significant risks, including learning losses from continued school closures that could worsen economic inequality. Meanwhile, inflation in developing Asia stayed below the global trend in 2021, but is expected to rise, according to the report. Regional inflation remained moderate at 2.5 percent last year due to relatively low food inflation, less severe supply disruptions, and the incomplete recovery, the ADB noted. Inflation in developing Asia this year and next will be driven by continuing recovery and elevated energy and commodity prices.

# CASE LAW UPDATE

**Subject Matter: 'Morality Clause in the Articles of Association'**

**Zahid Khan Shayek (Md.) Vs. Registrar of Joint Stock Firms and Companies and Others.**

**Company Matter No. 358 of 2018**

**Decided On: 08.02.2021**

**Equivalent Citation: 73 DLR (2021) 439, 73 DLR (2021) 439**

## ***Pertinent Facts:***

This matter revolves around a club named 'Sylhet Station Club Ltd.' Zahid Khan Shayek (hereinafter 'the petitioner'), carried a motion with a prayer to rectify the club's members' Register by restoring his name therein and, also, further directing the club to allow him to use the Club facilities. The notion arose when the authority of the club, terminated the membership of the petitioner due to the 'alleged' gross misconduct, misbehavior and propensity to disobey the Club norms and procedures. This termination was specifically based on the allegations brought by Mr. Kamal Hasan, a permanent member of the Club, against the petitioner. It contained an instance where, the demeanor of the guests brought by the petitioner was construed to be 'lewd/nasty', and allegedly the said guests were making indecent comments to certain women present at the club at that moment.

## ***Issues:***

Was there 'sufficient cause' involved in the decision against the petitioner? (As per S.43 of the Companies act 1994).

## ***Arguments in favor of the Petitioner:***

The petitioner invoked the provisions of section 43 of the Companies Act, and submitted that the petitioner's name was removed from the Register maintained by Club for members of Club without 'sufficient cause'. It was contended that the photograph produced in favor of establishing the case against the petitioner's guests proved nothing and all the members were going about normally at the event, having dinner. He argued that the allegations were vague, and uncorroborated by the absence of ocular evidence. Also directly removing the name of the petitioner as a member, without resorting to amicable means first was argued to be as an indication of ill motive. This was conjoined with the impending participation of the petitioner in the election of the Board of Directors (BoD) of the Club.

## ***Arguments against the petitioner:***

It was submitted that the petitioner's present application is not maintainable inasmuch as the petitioner had a forum to file an appeal before the Annual General Meeting as per Article 15 of the Articles of Association, but the petitioner without exhausting the said forum, came to the current court. Also it was argued that the petitioner's membership had been terminated by an administrative order, and as such the case does not strictly come within the meaning of rectification of the register. By referring to Articles 4, 12, and 14 of the Articles of Association (of the club), it was submitted that

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## CASE LAW UPDATE

the Club canceled the membership of the petitioner upon complying with the relevant provisions of the Club's constitution and, further, since the petitioner is a habitual violator of the Club rules and norms, permanent cancellation of his membership cannot be said to be a harsh decision. It was submitted that since the Club is competent to take a decision against any member of the Club for committing gross misconduct. In exercise of that power, an enquiry committee having investigated duly as per the provisions of the Articles of Association, found the allegation as to the petitioner's misbehavior and violation of the Club's Rules and Regulations to be true. Hence it was argued that membership of the petitioner has been rightly canceled. Also it was argued that there is no nexus between the election of the Club and the cancellation of the membership of the petitioner.

### ***The Court's Deliberations:***

To decide this case the court first looked at section 43 and the meaning of 'sufficient cause.' The judge relied on Black's Law Dictionary where it was found that, 'cause' means "something that produces an effect or result" and 'sufficient cause' means "good cause/just cause/lawful cause." So while deciding the case, the axiom for 'sufficient cause' was taken as 'sufficiently backed/authorized by law or a cause having sufficient rationality'. Hence the court decided to move ahead with two questions.

First being, if the removal from the register book by the Club was authorized by law and secondly, if the removal of the petitioner was rational. Now coming to the evidence produced as photographs, the court claimed that it would be difficult for any person with ordinary prudence to come to a conclusion that the men (guests) were looking at the women indecently from that. So, the court did not find anything wrong in the said photographs produced by the respondents. Also after scrutinizing the inquiry report, it transpired to the court that the committee has not obtained deposition of any eyewitness and, even, the deposition of hearsay witnesses. Finally, on the question of not interfering in the domestic/ administrative side of the club, the court decided that the matter falls into the statutory realm (u/s.43) and can be dealt with, by the company bench.

In conclusion the court upheld the application under section 43 of the Companies Act and the company (Sylhet Station Club Ltd.) was directed to restore the petitioner's name in its register book as a permanent member and allow him to enjoy all the privileges and facilities of the Club.

# LEGISLATIVE UPDATES

## SYNOPSIS OF THE TRADE ORGANIZATION ACT, 2022

Bangladesh Parliament has recently passed 'Trade Organization Act-2022' by repealing the Trade Organization Ordinance, 1961 which has been published in the official gazette vide from the National Parliament of Bangladesh dated 13th April 2022. Organizations licensed under the previous legislations shall remain valid under this new Act as long as they comply with the new legislation.

Additionally, the definition of "Trade Organization" provided by the new Act, 2022 is as follows-

(a) Which is eligible to be constituted as a limited liability company as per company law;

(b) Which operates as a non-political and non-profit organization and which is licensed under section 3 of the Act as an organization representing the area or various business, industry, commerce and services sector or any group or class of them and registered under the Companies Act, 1994.

(c) The funds or income or profits or borrowed money or otherwise of which are spend for the purpose of the organization, but no part of it are distributed among its members or any member of the executive committee or any director of the board of directors in the form of dividends or profits or bonuses or any other form.

### License of Trade Organization

Notwithstanding anything contained in any other law for the time being in force, no organization or Trade Organization shall be able to operate in Bangladesh unless they are being licensed by the Government of Bangladesh and only the following categories are eligible for establishing Trade Organizations-

1) A "Federation" established for the purpose of representing many kinds of businesses, industries, commerce and services in the whole of Bangladesh.

2) Chamber of Commerce and Industry for all industries situated in Bangladesh.

3) Chamber of Commerce and Industry representing, Businesses, Industries, commerce or services situated in District or Metropolitan areas.

4) Any Specific Business, Industry, commerce and Service sector wise representative for whole of Bangladesh.

5) Women Chamber of Commerce and Industry representing all Women Entrepreneurs of Bangladesh. Therefore, there will be opportunities to set up separate chambers for women entrepreneurs in each district. Provision has been made for women entrepreneurs to become members of trade organizations through licenses. The definition of Women Entrepreneur has been provided in the Act as-

"Women Entrepreneur means a woman who owns and operates a business, factory, or other commercial enterprise that she owns."

6) Representative of any Business, Industry, commerce and Services located in Poursava or cities.

7) Representative of any Business, Industry and commerce Services located in District or Upazila/Sub-District.

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# LEGISLATIVE UPDATES

8) Women Chamber of Commerce and Industry representing all business, industry, commerce and services operated by Women Entrepreneurs in District and Metropolitan areas.

9) Foreign Investors Chamber of Commerce and Industry representing all Business, Industry, commerce and Services operated by Foreign Investors of Bangladesh

10) Joint Chamber of Commerce and Industry representing countries that have close ties of diplomatic or trade relations with Bangladesh.

## Registration of Trade Organization

A Trade Organization after obtaining license from the government under section 3 of the new Act, shall register itself as a “limited liability company” under the Companies Act, 1994.

## Cancellation of License of Trade Organization

The Act under section 5(1) states that in the event where a registered trade organization or any of its branches or offices are not conducting business properly in the interest of relevant business, industry, commerce or service sector and whereas in response to an application or complaint of a trade association or federation has been made or the government at its own discretion may, by written order, dismiss the executive committee or board of directors of the trade organization.

The government will be able to appoint an administrator for one year after the cancellation. According to section 10 of the Act, no organization or company other than a trade organization may use the words 'Federation', 'Chamber', 'Council', 'Group', 'Alliance'.

Save as provided above, the Act also specifies certain provisions governing as to the proper operation and organization activities of the Trade Organization namely, (a) Classification and Subscription fees of Trade Organizations, (b) provisions pertaining to Memorandum of Association (MOA) & Articles of Association (AOA) of Trade Organizations, (c) provisions in relation to the change of name or addition, amendment or cancellation of AOA or MOA of Trade Organization, (d) Time extension to hold elections of Trade Organizations, (e) provision related to businesses, industries, commerce and service sectors to be members of relevant Trade Organizations etc.

## Offence and Punishment

If any person, organization, corporate entity, or Trade Organization violates any provisions of the Act or any other subsequent rule or law or hinders any responsibility to be undertaken by any officer or person under the Act then that person shall be liable for a minimum compensation of BDT 10,000.00 (Ten Thousand) only and maximum of BDT 100,000.00 (One Lacs) only.

# Commercialize your Intellectual Properties!



The world is increasingly moving towards an economy based on intangible properties. Now, the principal capital of a lot of major industries is not tangible property like land, machineries etc., rather it is their intellectual properties. Bangladesh is no exception to that global change. From 2010 onwards, the parliament of Bangladesh has enacted a number of legislations on intellectual properties that provide for both registration and means for commercialization thereof. This article shall focus on the ways how the businesses, both large and SMEs, can commercialize their intellectual properties and protect them while doing so. In doing so, the article shall highlight four main kinds of intellectual properties: trademark, copyright, design, and patent.

## Trademark

The proprietor of a trademark has the exclusive right to exploit his trademark in good and/or services for 7 years subject to renewal time to time. During this time, the proprietor can sell, use, transfer, or commercialize his trademark by different mechanism. For example, he may make a licensing agreement with another person in exchange of a fee, or there can be one assignment of such rights. The Trademark Act 2009 refrains from using the term 'license'. Despite such silence, a registered proprietor and an intending user can jointly apply to the Department of Patent, Designs, and Trademark (DPDT). They need to attach a licensing agreement, and an affidavit with the application.

## Copyright

If a person has written an original artistic, dramatic, literary, or musical work, he can submit an application to the Copyright Office for grant of a copyright against that particular work. The literary, artistic, dramatic and musical works other than photographs get the copyright protection for the lifetime of the author plus 60 years from the death of the author. These are the major properties of digital studios, book publishers, software developers. The proprietors of these properties can commercially benefit from such intangible properties. They can wholly or partially assign the ownership of the copyright to business entities who has the ability to commercially exploit and generate profits. The assignment agreement will generally prescribe the period for which such assignment shall be effective. If nothing is mentioned, then the tenure of the copyright will be 5 years.

Broadcast organizations and performers can also gain from commercially exploiting their copyright works. No person can re-broadcast, make fixation of such broadcast, sell or hire such broadcast works without permission of the proprietor of broadcast right.

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# Commercialize your Intellectual Properties!



The performer can also benefit from the system because no person can, without prior consent of the performer, make a fixation of his/her performance or reproduce such performance. However, the author of copyright can license these rights to a third party on fixed conditions in exchange of fees. In such licensing agreements, the parties can fix and negotiate the terms and conditions of such licensing.

## Design

Design means the features of shape, configuration, pattern or ornament applied to any article by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which if judged solely by the eye result in an attractive finished article. Although the patent portion of the Patents and Designs Act 1911 has been repealed, the design portion remains effective till date. The law grants 5 years protection from the date of registration subject to two subsequent renewals. The copyright granted against such designs can be commercially exploited by assignments and licenses. The owner of the copyright has to register such licensing contract in the DPDT.

## Patent

Patent is awarded to a person for scientific invention which is significantly novel from the existing prior art. A grant of patent ensures that the owner of the invention is protected from any sort of infringement for at least 20 years.

During this time period, the owner of the patent can commercially benefit from it. One such way can be licensing such patent to different persons from different regions and take fee for such service. To do that, it is important that the licensing agreement is submitted to the DPDT registrar. Thus, there are two requirements: making the licensing agreements compliant with the Patents Act 2022 and submitting the licensing agreement to the DPDT for registration. Lawyers with sharp eyes can make sure that such agreements are negotiated keeping their interest in mind.



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