

## Bangladesh – Likely One Of ‘The Fastest Growing’ Economies in 2021

Bangladesh and Vietnam out of six Asian frontier markets are expected to remain among the fastest-growing World Economies in 2021.

The Washington-based International Institute of Finance (IIF) has made this update on its outlook for frontier Asian economies, assessing their key risks recently.



As per Wikipedia, a frontier market is a term for a type of developing country's market economy which is more developed than that of a least developed country, but too small, risky, or illiquid to be generally classified as an emerging market economy. Such a market also carries too much inherent risks. Globally, 27 nations belong to this category.

IIF said that robust domestic demand and competitive manufacturing sectors, together with rebounding exports, will be the main growth drivers in 2021. However, it also said that economic slowdown has kept inflation in check, allowing for expansionary monetary policies with central banks cutting interest rates and taking additional measures to inject liquidity. Bangladesh's inflation in 2021 may remain above the target, the think tank predicted.

Inflation in Vietnam is projected to be somewhat below 4% due to weak demand while Bangladesh's rate is slightly above the target. Asian frontier markets have provided significant fiscal support to cushion the Covid-19 blow, as mentioned by the IIF.

It is also mentioned that Bangladesh has supplied more than Tk 1 trillion stimulus to boost the domestic economy. Both Bangladesh and Vietnam have been more resilient than many emerging markets (EMs) and non-Asian frontier markets (FMs) to Covid-19 shocks. Bangladesh and Vietnam are among the few that were able to maintain growth in 2020.

The IIF also added that Bangladesh's current account deficit is relatively small. Remittance was surprisingly strong in 2020 as lockdown and social distancing measures might have helped migrant workers to remit money back home.



# Legislative Updates

## Vaccines For Human Medicine

S.R.O. No. 43- Law/Income Tax/2021. - The National Board of Revenue has pre-published this by proposing further amendments to the Income Tax Rules, 1984 in the capacity given in section 185 of income tax ordinance (Ordinance No. XXXVI of 1984), namely:

The abovementioned Rules are mentioned in column (1) of The Class (c) of Rule 17A of the above Rules after the entries mentioned in columns (1) of Sl. No. 115 and columns (2), (3) and (4) as Sl.No. 115.01 and against it, columns (2), (3) and (4) shall have the following entries, namely:

115.01	30.02	3002.20.00	Vaccine for human medicine
--------	-------	------------	----------------------------

2. If any objection or suggestion is made about the above amendment proposal, the concerned person is requested to send the following sign within 15 (fifteen) working days from the date of publication of this notification in the Government Gazette and any objection or suggestion received from any of the amendment proposals during that period is national The Board of Revenue shall finalise the proposed amendment suo-vis the same and if no objection or suggestion is received from anyone during that period, the draft notification published in this manner shall be considered as final publication as per the proviso of sub-section (4) of Section 185 of the said Ordinance.

## Bangladesh Environment Protection Act, 1995

S.R.O. No.40-Ain/2021. • In consultation with the Director General, the Government issued the following conditional instructions in consultation with the Director General, on the powers given in Section 6A of the Bangladesh Environment Protection Act, 1995 (Act No. 1 of 1995) namely:

(1) A license has to be obtained from the Director General of the Directorate for production, import, marketing, sale, stock, or distribution of a mixture of chemicals or chemicals containing Hydrofluoro Carbon (HFC) or HFC mentioned in the Schedule of Annex-F of montreal protocol;

(2) The application for obtaining the licence under conditions (1) has to be submitted to the Director General in the form prescribed thereby;

(3) After the properly filled-in form is submitted under Conditions (2), the Director General shall verify the facts mentioned in the form or, in case, investigate and grant the Application or the Director General may direct the litigants to provide any relevant information in case of tendering;

(4) The tenderer has to deposit the amount for each item for licence fee through Treasury challan at Code No. 1-4541-000-2681 of Tk. 500 (Five Hundred) Only to the Director-General;

(5) The Director-General may thereby make any condition, requirement, correction or make reform of the licence and cancel the licence after hearing for breach of conditions;

(6) The provisions and other conditions for licensing in favour of the chemicals mentioned in the Schedule will be changed and modified in terms of the Montreal Protocol and the relevant Kigali amendment obligations.

(7) Provisions of section 4 of table (1) of sub-section (1) of section 15 of the Bangladesh Environment Protection Act, 1995 (Act No. 1 of 1995) shall apply to violation of one or more of the above conditions for conservation of the environment.

## CASE LAW UPDATE

# Abdus Salam Vs. Government of Bangladesh and others (Writ Petition 5035 of 2020)

### ***Facts of the case:***

The investigation of the present cases had been conducted by a person who was the inquiry officer as well as the informant.

### ***Issues before the Court:***

Whether the impugned SRO dated 26.11.2007 inserting inter alia new rule 24(1), thereby replacing rule 24 of the Anti-Corruption Rules 2007 dated 29.03.2007 and the new rule 24(1) of the amended Rules, authorizing the same person to be informant and investigation officer is repugnant to and inconsistent with Articles 31, 32 and 33 of the Constitution of the People's Republic of Bangladesh and entire proceeding has been vitiated.

### ***Decision and Reasoning of the Court:***

On meticulous examination of sections 20 and 32 of the Anti-Corruption Commission Act, 2004 and Rules 2, 3, 6, 10, and 13 of the Rules of 2007; it will be rather crystal clear that in fact the power of 'inquiry' and 'investigation' has been vested absolutely upon the Commission. An officer of the Commission cannot be an inquiry or investigation officer on his own initiative or sweet will. It is the Commission who may delegate or assign its power to its subordinate officer by a gazette notification to inquire or to investigate into the case [section 20(1), 20(2) and rule 2(ka), 2(cha) and 15]. Rule 10(3) stipules that the controlling officer of the investigating officer will be the supervising officer, who will supervise, monitor and guide the investigating officer in the process of investigation. As such, it is very difficult to draw an inference straightway that if the informant is assigned also as the investigating officer he must be an interested person and the report submitted by him shall be biased and partial one. Moreover, rule 10(5) speaks that before submitting the charge sheet or final report (memo of evidence) as the case may be before the concerned court the investigating officer should have placed it before the Commission together with the case docket for its approval.

And section 32 of the Act of 2004 and rule 13(2) have provided that no court should take cognizance of an offence against an accused, without the sanction of the Commission, unless and until the Commission approves the charge sheet. In the process of taking decision in submitting investigation report before the court concerned the investigating officer has nothing to do. Entrusting the same official to act as informant and investigator as well does not readily leave space of causing bias.

In view of the above, the Court had no hesitation to hold that there is no reason whatsoever to doubt the credibility of the informant and the investigation report solely on the ground that the informant himself has investigated the case. Merely on the basis of some unfounded apprehension or the doubts, the entire prosecution version could not be discarded and the accused is not to be straightly discharged or acquitted unless and until the accused is able to establish and prove the bias and the prejudice.

The question of bias or prejudice requires to be established and it cannot be inferred. It would have to be decided on the facts of each case. There could not be any general proposition of law to be laid down that in every case where the informant was the investigator, the trial is vitiated and the accused is entitled to acquittal. The matter has to be decided on a case to case basis without any universal generalisation.

The view thus may be justifiably deduced that merely in the absence of an explicit prohibition in the code or stature barring investigation by the complainant/informant himself, his authority could not be questioned.

The question of failure of justice should be left to the discretion and vigilance of the Courts. As such the formulation of a general Rule that the informant being the investigator the investigation and the trial is vitiated will not be a correct proposition.

Accordingly, the Court found no merit in both the writ petitions. However, it is our considered view that intending to avoid any controversy in regard to the investigation process it will be just and proper to conduct the investigation of a case applying the provision of sub rule (2) of Rule 24 of the Anti-Corruption Commission Rules, 2007.

## Fast Track for Commercial Disputes

Improvement in investment climate and attracting FDI, among other issues, require well-functioning and predictable judicial system. This is particularly important for commercial disputes so that businesses can rely on their protected right to enforce commercial contracts with greater certainty and reasonable timetable. After all businesses prefer not to get stuck in lengthy legal battles to enforce contracts as money stuck in litigation, coupled with legal expense, even if won, is money lost.



Unfortunately, Bangladesh has yet to secure well-functioning judicial system, especially in the lower judiciary due to various reasons including shortage of resource and century old legislative procedures. According to a report of the World Bank Group, currently there are more than 3 million cases pending for trial in the civil courts and it is estimated that around 10-15% of them are commercial in nature.

Consequently, in the in the Ease of Doing Business (EoDB) ranking, Bangladesh has been ranked second last, i.e., 189 out of 190 countries with a score of only 22.2 in the Enforcing Contracts Indicator. It has been reported that it takes 1442 days (nearly 4 years) and 64.5% of the claim as cost (including 40% as lawyers' cost due to time spent) to resolve a basic and simple commercial dispute in the court of first instance. The 1442 days is captured as 30 days for filing the case and service, 1047 days for trial and judgement and another 365 days for enforcement. Practically speaking, a small claim of about 10-20 lacs or even 50 lacs, won/recovered four years after the initiation with 64.5% lost in cost (situation worsen if appeal to High Court is involved) after adjustment of inflation, would hardly be desirable or satisfactory for anyone, let alone for businesses.

Notwithstanding the importance of properly functioning ADR to improve the situation, other avenues must be explored. It has been observed with great excitement that recently the Government of Bangladesh (GoB) through the Ministry of Law, Justice and Parliamentary Affairs has taken some timely measures to improve the state of affairs. In addition to introduction of virtual court through the Virtual Court Ordinance 2020 to allow electronic hearing and proceedings, recently on January 19, 2021, a gazette was issued revising the pecuniary jurisdiction of the judges of the lower judiciary.

According to the gazette, the higher threshold of the pecuniary jurisdiction for an Assistant Judge has been increased to BDT 15 lacs from BDT 2 lacs and the higher threshold for Senior Assistant Judge increased to BDT 25 lacs from BDT 4 lacs in the case of trying civil suits. In case of hearing the appeals of the civil cases, the financial jurisdiction was raised to BDT 5 crores from BDT 5 lacs for a District Judge.



With these changes, following the similar model of Small Causes Courts prescribed by the Small Causes Court Act 1887, Government of Bangladesh may consider introducing dedicated fast track for commercial cases, specially those falling within the revised pecuniary jurisdiction of Assistant and Senior Assistant Judges. Following the UK and Indian model, GoB may define following disputes as commercial disputes, with priority fast track for small claims up to BDT 25 lacs (at the level of Assistant/Senior Assistant Judges:

- I. Agreements for sale of goods or provision of services;
- II. Export or import of merchandise or services;
- III. Carriage of goods;
- IV. Franchising, Distribution & licensing agreements, Management & consultancy agreements;
- V. Joint venture, partnership and Shareholders agreements;
- VI. Subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;
- VII. Mercantile agency and mercantile usage in course of business;
- VIII. Technology development agreements;
- IX. Ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents including enforcement and interpretation of such documents;
- X. Construction and infrastructure contracts, including tenders;
- XI. Agreements relating to immovable property used exclusively in trade or commerce between two commercial entities for commercial purpose;
- XII. Insurance and re-insurance matters between commercial entities;
- XIII. Commercial contracts and contracts of commercial agency relating to any of the above;

Bangladesh may introduce this mechanism through practice direction of the courts and circular of the Ministry. As separate court is not created, only fast track priority for certain cases up to a certain value are being captured, the lengthy and complicated route of amending legislation can also be avoided.

- Furthermore, to improve the quality of the operation and functionality of the fast track, following features can be added to the fast track in the similar fashion:
- Automated random assignment of cases for the competent court for commercial disputes.
- An electronic case management system for generation of the following reports from the courts dealing with the commercial disputes:
  - i) Time to disposition
  - ii) Clearance rate
  - iii) Age of pending cases
  - iv) Single case progress
- Use of pre-trial conference among case management techniques for the commercial disputes;
- E-filing and processing of cases and E-payment of court fees for commercial disputes;
- Availability of electronic case management system for the judges and lawyers for this fast track forum.

If these measures are taken, not only the time of 1442 days can be reduced to 500-600 days for commercial disputes, it will also reduce cost and will improve quality of judicial proceedings and experiences of businesses engaged in litigation, with the obvious additional benefit of Bangladesh scoring additional points in the EoDB ranking and improving its rock bottom position by 100 notches.

A.S  Associates  
*Every Legal Help*

Suite No D-5, Mukti Bhaban (3rd Floor)  
21/1 Purana Paltan, Dhaka-1000, Bangladesh

Phone: +880-2-9561540

Email: [info@as-associates.net](mailto:info@as-associates.net)

[www.as-associates.net](http://www.as-associates.net)