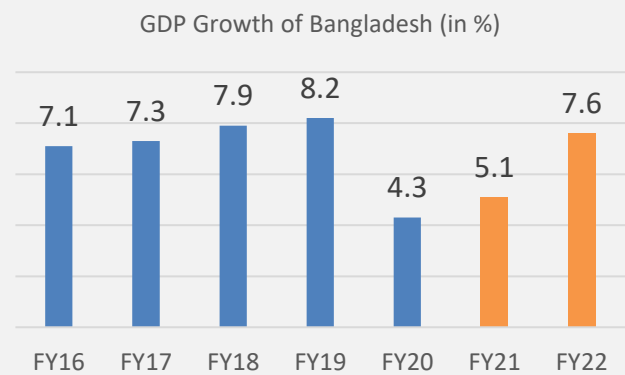


Bangladesh Economy will Return to High Growth Path Next Fiscal Year - says UN

Bangladesh's economy will return to the high growth trajectory in the next fiscal year overcoming the scarring impacts of the coronavirus pandemic, according to a United Nations report. The country's gross domestic product (GDP) will grow by 7.6 per cent in the fiscal year of 2021-22 following a 5.1 per cent expansion in the current fiscal year, said the World Economic Situation and Prospects 2021 report produced by the United Nations Department of Economic and Social Affairs.



Source: UN

*forecast

The UN forecast is higher than the projection made by the World Bank and is in line with that of the International Monetary Fund (IMF). The WB has said Bangladesh's economy will expand by 3.4 per cent in the FY22 from 1.6 per cent in the current fiscal year. The IMF has forecast 7.9 per cent growth in the FY22. The government has lowered the GDP growth projection for the current fiscal year to 7.4 per cent taking into account the fallouts of the coronavirus pandemic.

The report said that achieving resilience to external shocks should be among the most important considerations within the decision framework for policymakers in South Asia who are currently rethinking their industrial policies. The report has also urged the policymakers in South Asia to strengthen their efforts to formalize labor markets and strengthen their social protection systems to dampen the impact of the crisis on the most vulnerable and improve macroeconomic resilience.

In Other News

The Bill titled The Civil Courts (Amendment) Bill, 2021 has been passed in the Parliament that increase the pecuniary jurisdiction of the Lower Courts (Civil) in Bangladesh. The first instance Civil Courts will have more jurisdictional power to deal with high value suits and commercial disputes, thereby improving the judicial efficacy and limits in both Dhaka and Bangladesh. The reform will pave the way for improving commercial disputes index in the Ease of Doing Business ranking.

The threshold as per the Bill shall be as follows:

Assistant Judge - BDT 15,00,000/-

Senior Assistant Judge - BDT 25,00,000/-

Save as aforesaid, an appeal from a decree or order of a Joint District Judge shall lie (a) to the District Judge where the value of the original suit in which or in any proceeding arising out of which the decree or order was made did not exceed 5 (five) crore Taka; and (b) to the High Court Division in any other case.



Legislative Updates

Bangladesh Securities and Exchange Commission (BSEC) Directive on IPO (20 January 2021)

The Bangladesh Securities and Exchange Commission (BSEC) on 20 January, 2021 has issued a directive to introduce Electronic Subscription System (ESS) for application and allotment of initial public offering (IPO) to general public on pro-rata basis instead of lottery within 31 March, 2021, i.e. a process where whatever is being allocated will be distributed in equal portions. The new system for general investors would be mostly in par with the IPO system for eligible investors.

There are two conditions which have been attached with the direction. Firstly, an investor must have a minimum investment of Tk. 20,000 (Twenty Thousand) in the secondary market to apply for IPO shares. Secondly, a general investor must also apply for shares worth a minimum of Tk. 10,000 from the IPO. However, they can also apply for investment of multiplications of Tk. 10,000.

Market analysts and experts have welcomed this regulatory decision of BSEC for a number of reasons. For example, many investors wait for IPOs over the year. The traditional lottery system required a BO account and a minimal investment of Tk. 5000 only. For ensuring subscription, many "IPO Hunters" would open multiple BO accounts by using National Identity Card (NID) of various persons including their family members and applied through lottery. As such, more number of shares were concentrated in the hands of a very few number of people. The new system will scrap this standstill and promote flow of issue.

Again, a malpractice among general investors who get to subscribe to IPOs in the traditional lottery system is to sell off their shares after buying. This, according to many experts, irrationally increases the price of shares in the market. The new system will prevent this irrational price hike as there will be no auction. Moreover, the system will ease the infusion of fresh money into the market due the pre-condition of secondary market investment. This eventually creates a new class of long term investors and prevents investments to get stuck in the primary market.

Through pro-rata allotment, all applicants for IPO shares will have a chance to win at least a portion of shares as per their investment. The portion will be calculated by dividing the investment of each applicant by the amount of oversubscription and then multiplying the resulting fraction by the total value of floating shares for the retail investors. For example, a company issued 60,000 shares, received applications for 2, 40,000 shares and made pro-rata allotment. This will mean that applicants for 100 shares must have been allotted 25 shares; for 500 shares must have been allotted 125 shares and for 1,000 shares, 250 shares would have been allotted as applicants have been allocated 25% of the shares applied.

In one hand investors believe that this system will put an end to market monopoly and ensure a fair allocation method as lottery system was supposedly not beyond human intervention. On the other hand regulators believe that this will reduce the time for IPO subscription as the subscription by eligible investors and general investors would be done at the same time and that the new system will be a breakthrough for sustainable investors and foe regular flow of issue. The system shall come into effect from 1 April, 2021 as per the directive and is expected to be launched from the subscription of NRB Commercial Bank Limited's IPO as per the BSEC officials.

CASE LAW UPDATE

A.K.M Asiful Haque Vs. Secretary, Law and Justice and Division, Ministry of Law, Justice and Parliamentary Affairs and others (2020)

Writ Petition 4611/2020

Fact:

In this writ petition, the petitioner under Article 102 of the Constitution of the People's Republic of Bangladesh challenging the enactment namely, "আদালত কর্তৃক তথ্য প্রযুক্তি ব্যবহার আইন, ২০২০" passed by Bangladesh National Parliament, being Act No. 11 of 2020 published in the Bangladesh Gazette on 09th July, 2020 with immediate effect.

Issues before the Court:

1. Whether the definition of 'adalot' as appeared in the Ain No.11 of 2020 (the Act) is inconsistent with Articles 94 and 152 of the Constitution and whether such definition has degraded the status of the Supreme Court.
2. Whether the Ain is applicable to the Supreme Court in conducting cases by using information technology.
3. Whether the Ain is hit by Articles 81(1)(c), 81(1)(e), 81(3) and 82 of the Constitution.
4. Whether section 5 of the Ain 2020 has degraded the Power of the Hon'ble Chief Justice or the Practice Direction issued under section 5 is inconsistent with the "Supreme Court of Bangladesh (High Court Division) Rules 1973.
5. Whether the Virtual hearing under the Ain is hit by Article 35(3) of the Constitution.

Decision of the Court:

1. A comparison of definition between 'adalot' as per definition of Act 11 of 2020 and Article 152 read with Article 94 of the Constitution it appears that nothing new has been introduced in the Ain in defining the term 'adalot' but it has reintroduced the definition of 'adalot' from the Constitution by including 'tribunals' in the said definition which is very much consistent with the Constitution and thus the question of degradation of the status of the Supreme Court does not arise at all.
2. The Ain has included the High Court Division and the Appellate Division in the definition of adalot and the higher judiciary is well equipped with

and empowered by law to exercise all judicial functions of the lower judiciary along with its designated functions.

3. A plain reading of the aforesaid provisions under Articles 81 and 82 together suggests that when provisions containing imposition of taxes etc. as spelt out in Article 81(1) and, the expenditure of public moneys in a Bill is involved the same should be placed before the Parliament with the recommendation of the President. The Government cannot make any expenditure without the sanction of Parliament. The mechanism of parliamentary control over the appropriation is the Consolidated Fund out of which all governmental expenditure is met. On perusal of the impugned Ain, it appears that there is no provision therein which imposes any tax upon the public or provides any expenditure from public moneys for the purpose of conducting the court proceeding through video conferencing.
4. Section 5 of the Ordinance is incorporated in the Act 11 of 2020 as section 5 therein without any change. It appears that this section does not curtail or enhance the power of the Hon'ble Chief Justice or degraded the Supreme Court. The present law is a new procedural law empowering the Adalat to conduct judicial proceeding by using information technology, the purpose of the Ain will be frustrated if the use of cell phone or other electronic device is prohibited. Moreover, the Practice Direction as well as the High Court Rules are delegated/subordinate legislations. It is settled by the Indian Supreme Court that a sub-ordinate legislation will not be invalid even though it is in conflict with the provisions of some general law, if it is within the scope of 18 the delegating statute.

CASE LAW UPDATE

A.K.M Asiful Haque Vs. Secretary, Law and Justice and Division, Ministry of Law, Justice and Parliamentary Affairs and others (2020)

Writ Petition 4611/2020

5. Public trial reflects “open justice” and any trial that grants access to the court or the venue at which court proceedings would take place will be regarded as “public trial”. Article 35(3) of the Constitution of the people’s republic of Bangladesh mandates that the criminal proceeding of a court or tribunal shall be held in public, meaning, for the use of everyone without discrimination. Courtrooms are considered as public place as opposed to the Judge’s Chambers for the simple reason that the Judicial Officers, the parties and their Counsels and any interested member of the public has unrestricted ‘access’ to it. With all due respect, if the Judge granted unrestricted access to his chamber to the parties and their Counsels and any interested member of the public, the chamber would move from a ‘private’ place to a ‘public place’. Same conditions when available in a remote hearing i.e access being granted to and available to Judicial Officers, the parties and their Counsels and any interested member of the public will make the venue of such remote/virtual hearing be it zoom, skype, whatsapp etc. a public place in line with the provisions of Article 35(3) of the Constitution. It is the court’s opinion, therefore, that the apprehension whether remote hearings are in conformity with the constitutional requirement that the proceeding be in public, the answer would be that the Constitution did not say that such proceedings must be in a physical structure called a Courtroom. Once the proceeding in a remote/Virtual hearing through video conferencing is made accessible to everyone involved and any interested member of the public, then the condition as provided by Article 35(3) would be complied with.

Extra

Everyone in Bangladesh has a Mobile Connection now !!

According to a data from the Bangladesh Telecommunication Regulatory Commission (BTRC), by the end of 2020, there were 17.01 crore active mobile subscribers, and as of 11 January 2021, Bangladesh's population stands at 16.55 crore, as per the Worldometer elaboration of the latest United Nations data.

The mobile operators added about 45 lakh new subscribers during the course of the year, which is the lowest since 2012 at least. In 2016, no new customers were added; rather 56 lakhs were struck off for the enforcement of biometric SIM registration, which rationalized the subscriber base. This suggested that mobile operators have reached a point of saturation in terms of subscribers.

They now have to focus on services to boost their revenue rather than by getting more subscribers on board.

Telecommunication experts are seeing this as a very positive sign as people in rural areas are also accessing digital services through smartphones lately.

About 88 lakh new mobile internet subscribers came on board in 2020, up 8.6 per cent from the previous year. At the end of 2020, there were 10.23 crore mobile internet users, which is the highest yet, helped in part by the pandemic that turbocharged digitalization.

Nationally Determined Contributions (NDCs) Responsibility of Bangladesh in Respect to Climate Change.

The Earth's atmosphere comprises of greenhouse gases that includes water vapor, carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and Sulphur hexafluoride (Kyoto Protocol, 1998). These greenhouse gases have the capability to absorb heatwaves coming from the sun and it makes inner atmosphere warmer. The effect of climate change is a concern for all human being which makes it one of the most crucial issue to be addressed by supra-national institutions such as the United Nations that have formulated the UN's Framework Convention on Climate Change in 1992.



Photo Source: UNICEF

The Convention is signed by all 196 countries making it one of the universal conventions which under Art. 7 established the UN Conference of the Parties which is entrusted with the duty to review the implementation of the Convention. As part of the Conference's activities (COP21), the Paris Agreement on Climate Change set the threshold of 2°C as pre-industrial averages and agreed to take more step on tackling climate change by maintaining nationally determined contributions (NDCs). NDCs are part of long-term goal to reduce temperature (Art. 2 & 3, Paris Agreement) that obliges the State to 'prepare, communicate and maintain successive nationally determined contributions that it intends to achieve (Art. 4(2), Paris Agreement) which shall be communicated regularly every five years (Art. 4(9), Paris Agreement). This approach of reducing emissions of greenhouse gases is called "bottom-up pledge-and-review" based on the self-determination of the parties to combat climate change in the long term. The Paris Agreement is a legally binding agreement ratified by 184 countries till date. The NDCs are future action plan to achieve post-2020 climate change goals through the contribution of the member states by adopting domestic policy, strategic plans, targets and undertaking, and the implementation of the plan are robustly scrutinized through periodical review, transparency, accounting and global stock take.

Bangladesh has submitted its intended NDCs in 2015 as the preparation from the plan took place since 2012. The intended NDC has now crystalised into concrete binding plan that ought to be implemented as a legal obligation. Bangladesh have been affected significantly due to climate change with emissions of less 0.35% of global emissions. With the significant future risk, Bangladesh aims to contribute collectively to combat climate change through two-fold strategy of 'increasing resilience to the impacts of climate change' and 'achieving lower-carbon'. Thus, the INDC put forwards points on mitigation strategy, adaption strategy, participation, financial assistance, technical support, inventories and financing. As per UNFCCC data, in 2004 the highest emissions were from the sector of agriculture, energy and waste.

The key areas mitigations for emissions reduction is introduced are power, transport, and industry sector based on conditions or unconditionally. The conditions for emissions reduction are mainly international support through finance, investment, technology transfer and capacity building. In respect of mitigation of GHG emissions the targets are unconditional reduction 5% (12 MtCO₂e) from BAU level in 2030 and conditional reductions up to 15% (36 MtCO₂ from BAU level in 2030 in the power, transport and industry section as well as other mitigation conditional upon further resources. The mitigation actions to include: 'improved energy efficiency; natural gas exploration, renewable energy development, agriculture management, afforestation and reforestation; reduction in urban waste emissions'. Emissions from the power, transportation and industry sector which form part of the "Business as Usual" (BAU) scenario would represent 69% of the total emissions in 2030 (ICF, 2016) amounting to 234 MtCO₂e in 2030 compared to 64 MtCO₂e in 2011.

Continued in page 6

Specifically, in the Power sector the current emissions are 21 MtCO₂e which would 91 MtCO₂e BAU case in 2030, an increase of 336% and the unconditional contribution will reduce the emissions to 86 MtCO₂e (5%) and conditional contribution would reduce the emissions to 75 MtCO₂e (18%). Similarly, data is available for the projection in the INDC for Transport and Industry section. Nevertheless, it has been highlighted that data quality is an issue and more robust data to shed light into better analysis.

The existing mitigations actions plans includes:

- 20% reduction in energy intensity (per GDP) by 2030
- Establishment of energy management system and energy audits
- Promotion of energy efficient products (Energy Efficiency labelling programme)
- Energy Efficiency measures for structures such as heat insulation and cooling measures.
- The Solar Homes Programme
- Renewable Energy Policy (5% renewable sources by 2015, 10% by 2020)
- ICS 1.5 million and SHP 4 million dissipated.
- Improving kiln efficiency in the brick making industry, composting of organic waste and waste biomass-based thermal energy generation.
- Construction of Combined Cycle Power Plant (CCPP)

Additional mitigation actions to support the conditional contributions are:

Sector	Description	Objectives of the activity by 2030
POWER	<ul style="list-style-type: none"> • Coal generation using super-critical technology • Promotion Wind power • Grid connected solar plant 	<ul style="list-style-type: none"> • 100% of new coal based power plants use super-critical technology by 2030 • 400 MW of wind generating capacity by 2030 • 1000 MW of utility-scale solar power plant
TRANSPORT	<ul style="list-style-type: none"> • Model shift from road to rail • Reduced congestion and improved running of traffic. 	<ul style="list-style-type: none"> • To achieve a shift in passenger traffic from road to rail of upto around 20% by 2030 compared to the BAU. • 15% improvement in the efficiency of vehicles due to more efficient running.
INDUSTRY (Energy-Related)	<ul style="list-style-type: none"> • Carry out energy audits to incentivize the uptake of energy efficiency and conservation measures in the main industrial sectors based on the Bangladesh Energy Efficiency and Conservation Masterplan 	<ul style="list-style-type: none"> • 10% energy consumption reduction in the industry sector compared to the BAU.

The INDC further includes action plan conditional upon international support in other sectors such as Households, commercial building, agriculture (non-energy related), Waste, Land use, Land use change and forestry. Bangladesh commits to a fair and ambitious goal of not exceeding the average GHG emissions of developing countries and approached climate change with rigorous action plan and further posited that ‘the actions needed to deliver on these commitments will require international support in the form of finance, technology transfer and capacity building’.

In order to adapt to climate change that poses threat to vulnerable areas is presented by the National adaption programme of action – NAPA 2005 (revised in 2009). Bangladesh is a country prone to the adverse impacts of climate change due to its geographical position and has been devastated in the past decades due to extreme weather events

The approach of Bangladesh has been to 'protect the population, enhance their adaptive capacity and livelihoods options and to protect the overall development of the country. In furtherance of the plan, Bangladesh has established two funds: a) the Bangladesh Climate Change Trust Fund (Govt's funded) and the Bangladesh Climate Change Resilient Fund (foreign aid).



The main areas and activities to address the concerns of climate change are: i) food security livelihood and health protection; ii) comprehensive disaster management (Improved early warning system); iii) Coastal Zone Management; iv) Flood Control and Erosion Protection; v) building Climate Resilient infrastructure (cyclone shelters); vi) increased rural electrification; vii) enhanced urban resilience (drainage system); viii) ecosystem based adaption; ix) community based conservation of wetlands and coaster areas and x) policy and institutional capacity building.

Bangladesh is committed to the reduction of GHG emissions and The Ministry of Environment, Forest and Climate Change has formulated an implementation road map of the Nationally Determined Contribution of Bangladesh 2017. Perusal of the road map will be required for further analysis of the Bangladesh's activity to implement the NDCs committed in the Paris Agreement. Furthermore, the NDC Partnership provides various tools and support to combat climate change and reach the determination of contribution.