

## ADB Predicts Strong Recovery for Bangladesh Economy in FY21

The Asian Development Bank (ADB) has projected a strong and healthy economic recovery for Bangladesh in FY20-21, where the gross domestic product (GDP) is expected to grow by 6.8% backed-up by strong manufacturing and exports. However, the prolonged Covid-19 pandemic situation may threaten the recovery and growth projection depending on the country's export destinations.



The regional lender made the growth projections in its updated report of Asian Development Outlook (ADO) 2020, including that of South Asian economy which is predicted to grow at 7.1% in FY2021. The outlook report suggested that GDP growth is projected at 6.8% in FY2021, revised down from earlier predictions because of Covid-19 and because its impacts are enduring longer than expected, and government stimulus packages have had little time to take hold.

As per the provisional data of Bangladesh Bureau of Statistics (BBS), in the last fiscal year Bangladesh attained 5.24% GDP growth, while the government set an 8.2% growth target for FY2021. With cautious reopening of the economy since May 2020 and subdued global economic conditions, recovery is expected to be gradual in the first two quarters of FY2021 according to the report. A strong manufacturing base will enable more rapid recovery with projected strengthening of growth in the advanced economies and import demand from them. Though the report added that sensible macroeconomic management and speedy implementation of the Government stimulus measures are key imperatives to ensure the projected recovery. The main risk to this growth projection is a prolonged pandemic in Bangladesh or its export destinations.

Bangladesh exports are also expected to grow by 8% in FY2021, with gradual recovery in the first half accelerating in the second along with the expected upturn in the global economy. Export recovery will be aided by Government stimulus measures and efforts to improve the business climate, as well as using duty-free trade opportunities extended by the People's Republic of China. Imports as well are expected to grow by 5% as the apparel sector returns to normal operations, thus requiring more raw materials.

According to the report, growth in agriculture is also projected to rise to 3.5% in the current fiscal year, aided by Government subsidies for seed, fertilizer, innovation, farm mechanization, and irrigation, and refinancing facilities to provide working capital for small and medium-sized farms affected by the pandemic. Growth in industry is forecast at 10.3%, assuming improved consumer demand, strong export growth following recovery in major export markets, and expected growth in private investment. Inflation is also projected steady at 5.5% in FY2021 due to a good crop outlook and favorable international commodity prices.



# Legislative Updates

## Legislation Updates of August, 2020

### Primary Legislations:

#### Stamp Act, 1899

Pursuant to S.R.O. No. 232-Ain/2020/08.00.0000.040.22.004.18 dated 23 August 2020, the Government as per power conferred by Section 9 of the Stamp Act 1899 hereby reduces the stamp duty applicable to trust deed registered of Alternative Investment Fund registered with Bangladesh Securities and Exchange Commission from 2% to 0.1%, provided that the maximum duty shall be BDT 10 lac and minimum duty will be BDT 5 Thousand.

The SRO No 351- Ain/2019/ 08.00.0000.040.22.004.18 dated 5 November 2019 is hereby repealed.

#### Road Transportation Act, 2018

Pursuant to SRO No 228-Ain/2020, the Government as per power conferred by section 123 of the Road Transportation Act 2018 amends the Motor Vehicles Regulations, 1984 thereby providing exemption to freedom fighter.

68A. Exemption from fitness fees for freedom fighter.- (1) No fitness fees shall be charged on a motor vehicle owned and exclusively used by a wounded freedom fighter, awarded freedom fighter, widow of martyred (Shaheed) freedom fighter, widow of a wounded deceased of awarded deceased freedom fighter.

Provided that the certificate of a freedom fighter shall be submitted to the Inspector of motor vehicles while issuing or renewing fitness certificate of the motor vehicle.

(2) The fees exempted under sub-registration shall cease to exist as soon as the motor vehicle is transferred to any other person, and the transfer shall take effect only after the payment of fees as applicable to each case."

### Secondary Legislations:

#### Bangladesh Legal Practitioners and Bar Council Order, 1972

Rule 60A of the Bangladesh Legal Practitioners and Bar Council Rules, 1972 has been replaced as per below:

"60A. (1) Every applicant for admission as an Advocate shall have to complete such courses as may be determined by the Bar Council, and to qualify Multiple Choice Question (M.C.Q.), written, and viva voce examination.

(2) The M.C.Q. examination shall be of 100 (hundred) marks of 100 (hundred) questions to be answered within 1 (one) hour, and be held in accordance with the procedure and standard followed by the public universities or the Public Service Commission.

(3) A candidate who obtains 50 (fifty) out of 100 (hundred) marks in the M.C.Q. examination shall be eligible to appear in the written examination and shall have to pass the written examination by two consecutive attempts, failing which the M.C.Q. examination result of such candidate shall stand cancelled.

(4) The written examination shall be of 1 (one) paper of 100 (hundred) marks as per the syllabus prescribed by the Bar Council and the duration of the examination shall be of 4 (four) hours.

(5) The written examination shall be held on such date and time and place as may be determined by the Bar Council.

(6) The details as to such examinations including the syllabus may be collected from the Bar Council by the persons seeking admission."

## CASE LAW UPDATE

# Md. Abul Kaher Shahin vs Emran Rashid and another Judgment of the Appellate Division of the Supreme Court of Bangladesh

These Criminal Appeals being no. 63-66 of 2017 before the Appellate Division of the Supreme Court of Bangladesh have arisen out of the judgment and order passed dated 31.08.2016 passed by the High Court Division in Criminal Appeal Nos. 2116-2119 of 2016 reversing those dated 17.02.2016 passed by the learned Metropolitan Sessions Judge, Sylhet Sessions Case Nos. 3079 of 2013, 172 of 2014, 174 of 2014 and 3080 of 2013.

### **Fact of the Case:**

In this case, prosecution was launched by the complainant for the offence punishable under section 138 of the Act basing on an agreement between the complainant appellant and the respondent pursuant to which the respondent issued the disputed cheques. Agreement produced by the complainant showed that there was an arrangement between the parties whereby complainant was assisting the respondent in selling his property in consideration of a commission amount for BDT 5,00,00,000.00 (Five Crore) and the respondent had issued the cheques in favour of the complainant to that effect. However, the complainant had failed to perform his contractual obligations under the said contract but in the meantime, placed these cheques at bank for encashment but was not honoured by the bank due to the "Stop Payment" instruction from the drawer of the said cheques.

The appellant complainant has filed criminal cases under Section 138 of the Negotiable Instrument Act, 1881 (the Act) against the respondent and the Learned Session Judge, Sylhet convicted the respondent in all cases and sentenced him to suffer simple imprisonment for a period of 1(one) year in all cases and to pay fines accordingly.

### **Issue before the Court:**

The important question in this case is that while considering the charge brought under section 138 of the Act, the Court is empowered to examine the authenticity of the cheque only or it shall examine and consider the bonafide of the claim of the complainant and the defence case appeared in materials available on record.

### **Decision of the Court:**

- I. The Appellate Division has stated that a person issuing the cheque cannot escape liability even if there is a stoppage of payment of cheque, unless he disproves the same for the other reasons. In case a cheque issued by a person in favour of another is dishonoured by the bank for want of funds, the holder of the cheque is entitled to the amount as reflected in the cheque since cheque is a negotiable instrument governed under the Act. Once there is admission of the execution of the cheque or the same is proved to have been executed, the presumption under section 118(a) of the Act is raised that it is supported by consideration.
- II. The category of "stop payment cheque" would be subject to rebuttal and hence it would be an offence only if the drawer of the cheque fails to discharge the burden of rebuttal. The accused person can prove the non-existence of a consideration by raising a probable defence. If the accused discharges the initial onus of prove showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the complainant. He will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to grant of relief on the basis of negotiable instrument.

**CASE LAW  
UPDATE****Md. Abul Kaher Shahin vs Emran Rashid and  
another Judgment of the Appellate Division  
of the Supreme Court of Bangladesh**

- III. Where the accused person fails to discharge the initial onus of proof by showing the non-existence of the consideration, the complainant would invariably be held entitled to the benefit of presumption arising under section 118(a) of the Act in his favour. To disprove the presumption, the accused person has to bring on record such facts and circumstances upon consideration of which the Court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man would under the circumstances of the case, shall not act upon the plea that it did not exist.
- IV. When a presumption is rebuttable, it only points out that the party on whom lies the duty of going forward with evidence, on the fact presumed and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed, the purpose of the presumption is over. To rebut the statutory presumptions an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial. The accused may adduce direct evidence to prove that the cheque in question was not supported by consideration.
- V. Accordingly the Appellate Division of the Supreme Court has dismissed the said appeals based on the by affirming the findings of the High Court division whereby the Hon'ble High Court being the last court of facts upon elaborate consideration of the evidence both the oral and documentary made the conclusion that the complainant failed to take any step to sell the property of the respondent, rather the respondent and his brother and the sister sold the said property to the U.S.A Embassy and the complainant did not help the respondent in any way in this regard. And the Hon'ble Appellate Court further held that where the amount promised shall depend on some other complementary facts or fulfilment of another promise and if any cheque is issued on that basis, but that promise is not fulfilled it will not create any obligation on the part of the drawer of the cheque or any right which can be claimed by the holder of the cheque.

## Annual General Meeting (AGM) and Compliance Requirements



It is one of the compliance requirements for a Company incorporated in Bangladesh under Companies Act 1994 that it would hold a meeting of its shareholders in each year, which is commonly known as Annual General Meeting (AGM). This write up will cover the process and guideline for holding AGM of a company incorporated in Bangladesh.

It is to be noted that a company is under an obligation to hold AGM in each Gregorian calendar year, and within fifteen months from the date of its last AGM. However, in case of first AGM, the company will have the option to hold the same within eighteen months from its incorporation. For first AGM, while complying eighteen months' requirement, it shall not be necessary for the company to hold AGM in the year of its incorporation or in the following year. The Registrar of a company i.e. Registrar of RJSC has the power to extend the time with certain limit to hold AGM up to 90 days on the basis of an application made by any company within thirty days from the date of expiry of the period specified for holding AGM.

A Company, who is willing to hold its AGM, in compliance with Companies Act 1994, have to serve at least 14 days' notice to its shareholder specifying the date, time, place and agenda for holding the AGM. The notice period may be

shorter if all shareholders having right to present and vote in the AGM have agreed in writing.

In the AGM, balance sheet together with the profit and loss account or an income and expenditure account, as applicable, is to be submitted, and such accounts must be made up to a date not more than nine months previous to the date of the meeting. The balance sheet laid before a company in AGM shall be attached a report by its Board of Directors in respect of affair of the Company.

It is statutory requirement that the profit and loss account or the income and expenditure account as applicable shall be prepared for the period (a) in the case of the first AGM, the period beginning with the date of incorporation of the Company and ending on a date which is within nine months preceding the date of the AGM; or (b) in case of any subsequent AGM, the period beginning with the date immediately after last account and ending on a date which is a date within nine months preceding the date of the meeting; or in case of the company carrying on business or having interest outside Bangladesh, a date within twelve months preceding the date of the AGM.

Here also, the Registrar of a company has the power to extend the time limit up to 90 days to a Company for submitting balance sheet together with the profit and loss account or an income and expenditure account before the shareholders in AGM. Before submitting profit and loss account or the income and expenditure account, as applicable, in the AGM, the same shall be made available for a period of 14 days at least for inspection by the shareholders and stake holders.

Taking into consideration of the aforesaid rules, it is very common that AGM of a company in Bangladesh is scheduled within nine months following end of each of the financial year; and balance sheet together with the profit and loss account or an income and expenditure account, as applicable, have been submitted in the said AGM, so that all compliance have been ensured.

Once AGM takes place, in compliance with Companies Act 1994, a return is to be filed before the Registrar within 30 days containing annual list of members and other related information so requested in Schedule X.

## In Other News

### 82% of Bangladesh's smartphone demand met through domestic manufacturing

Bangladesh is on track in becoming self-reliant in smartphone production, which already captures a massive 82% market share with local manufacturing just after three years of inception.

Smartphone producers of the country have given the credit for such a mammoth rise to the policies adopted by the government which provided attractive incentives and a friendly investment climate to ensure growth in this sector. They also praised the high adaptability of the workers which has expedited the growth.

Against the annual demand of 6.82 million smartphone units in FY19-20, Bangladesh manufactured as many as 5.58 million smartphones, which translates to 81.81% of the total market demand.

According to the Bangladesh Telecommunication Regulatory Commission (BTRC), the total number of handsets manufactured and imported in the country in FY19-20 was 29.48 million units. Of which 14.98 million units (51%) were locally manufactured by 10 local companies whereas 14.50 million units (49%) had to be imported.

Of the total mobile phones used in the country, 92% are feature phones and only 8% are smartphones. In FY20, the country sold 6.82 million smartphones, of which 5.58 million (81.81%) units were locally manufactured and the rest 1.23 million (7.19%) were imported.

When it comes to feature phones, Bangladesh heavily relies on other countries. In FY20, 13.26 million units of feature phones were imported, while the local manufacturers produced 9.40 million units.