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NEWS LETTER

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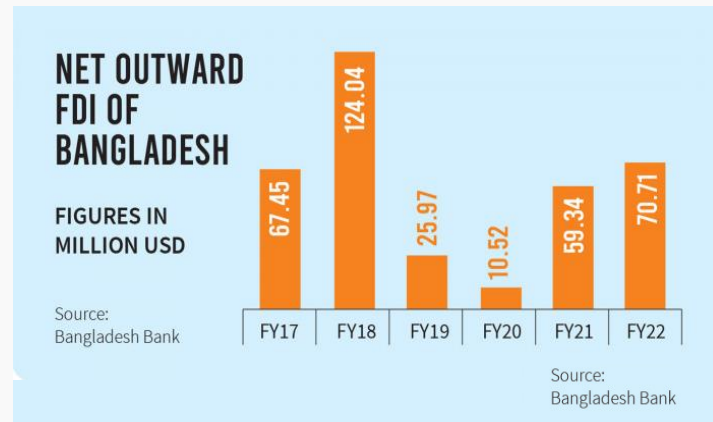
Bangladeshi Firms' Investments Abroad Rise 19% in FY22

Outward foreign direct investment by Bangladeshi firms through legal channels increased by 19% in the fiscal 2021-22 compared to the same period in the last fiscal year owing to the liberalization of outbound investment policy by the Bangladesh Bank.

Local firms invested a total of \$70.71 million, equivalent to Tk700 crore, in FY22 – up from \$59.34 million, or nearly Tk600 crore, in FY21, according to the Foreign Direct Investment and External Debt report published by the central bank.

Outbound investment increased significantly in the last six years after the government amended the Foreign Exchange Regulation Act in 2015 by adding a conditional provision which permitted such investments for export-related enterprises. With this amendment, Bangladeshi firms have extended their business to more than 20 host countries, according to Bangladesh Bank data. From FY17 to FY22, total investment abroad stood at \$358 million – equivalent to Tk3,600 crore.

The government for the first time opened outbound investment opportunities for local companies as the country's foreign exchange reserves crossed \$30 billion in 2015. The high reserves also prompted the Bangladesh Bank to liberalise its policy during 2020, allowing foreign companies to outflow remittance to their home countries without prior approval from the central bank. The objective of the lax monitoring on outward remittance was to attract more foreign investment. However, the liberalisation stance seemed to work little as the FDI growth has not been impressive in the last two fiscal years.



Rather, foreign exchange reserves have fallen amid the huge outflow. The foreign exchange reserve grew to \$48 billion in August last year, falling below \$34 billion in December amid a severe dollar crisis in the market.

The FDI inflow, which registered 50% growth in FY19, dipped to negative 39% in the FY20 during the time of the pandemic. The FDI inflow grew slightly by 5.7% in FY21 and 37% in the last fiscal year, according to Bangladesh Bank data. The reserves, meanwhile, stood at \$35 billion in October. Though the FDI inflow grew in the last two fiscal years, the contribution to the gross domestic product (GDP) remained unchanged. The net FDI inflow of GDP was less than 1% in the last three years, central bank data shows.

Of the net outward FDI, the highest investment by the Bangladesh firms went to the UK, amounting to \$32.62 million in the last fiscal year, 46.1% higher from the previous year. Investment to Hong Kong was the second highest with \$15.50 million followed by Nepal (\$6.80 million), India (\$5.23 million) and the United Arab Emirates (\$3.26 million), according to Bangladesh Bank data.

The major sectors where these investments went were financial intermediaries (\$66.09 million), mining and quarrying (\$3.14 million), metal and machinery products (\$1.04 million), other manufacturing (\$0.33 million), chemicals and pharmaceuticals (\$0.09 million) and trading (\$0.02 million).

CASE LAW UPDATE

Agrani Bank vs. MA Kahhar, 2002 31 CLC (HCD)

Facts:

A scheduled bank filed the instant civil case as the plaintiff, naming one MA Kahhar as the sole defendant. Here, it was held that the defendant was the only guarantor for the repayment of a loan for Taka 15,000 for Abdul Hai Pathan. According to the plaintiff, the defendant agreed to return the loan in 10 equal monthly payments of Taka 500, with the first payment due one month after the loan was given. On this point, the defendant raised a question on the legitimacy of asking interest money without any prior notice when the limitation period was over by denying the claim of the plaintiff. Despite the partial judgment being in his favor, he did not file an appeal. Additionally, nobody spoke on his behalf during this appeal's hearing.

Issues:

- A. Whether the appeal against judgment and decree whereby money suit decreed partially offers culminates into contract at all or not?
- B. Whether section 25(3) of the Contract Act which adds a saving clause of the provisions of voiding an agreement on the basis of consideration can retrieve the plaintiff/appellant's claim or not.

Judgment:

On the trial, the defendant argued that section 19 (Effect of acknowledgement in writing) of the Limitation Act could not be read to suggest that an acknowledgement made after the original limitation period has passed will not

allow for the recovery of a time-barred debt. Moreover, Section 25(3) incubates its own kind contracts, but only to the extent that it does away with the requirement of an agreement between two or more parties in which there is a reciprocal exchange of goods or services, which calls sui generis in law. As a result, even under the exception established by Section 25(3), a contract must have an offer and matching acceptance. The definition of "Promise" demonstrates that in order for an offer to become contractible, it must be fertilized by reciprocal acceptance. The subsection contemplates a written instrument holding the offeror's signature. When Section 25(3) refers to a "promise," it invariably refers to an accepted offer, not a broken pledge. In the current case, the offer was a documented one that was endorsed by the defendant's signature. However, there is no proof in the record to suggest that the offer was ultimately accepted.

There is no section 25(3) contract that would have given the plaintiff the right to recover more than Taka 15,000 in damages. The parties to the new contract created by subsection 3 are free to specify a sum different from the previous covenant's amount. The parties may agree to a smaller sum as long as it is less than the original debt or par, as determined by the parties to the new agreement. On the whole, the judgment has acknowledged a referred case principle of Madras High Court, Puliath Govinda Nayar vs Parekalattil Achutan Nair, which says that if someone pledges to pay a portion of the obligation, it should be assumed that they have pledged to pay the entire debt lacks foundation. A person who promises to pay a banned debt can only be held liable for the promised amount and not the entire debt. Altogether, High Court Division dismissed this appeal without any order as to cost.

LEGISLATIVE UPDATES

Compulsory Licensing Feature in the New Bangladesh Patent Act, 2022

The Patents and Designs Act, 1911 was replaced in April by the new Bangladesh Patent Act, 2022 which was approved by parliament. Since it has been in effect for more than a century with little to no alteration, the recently passed statute has been the subject of extensive scrutiny. The amended Act takes into consideration the requirements for international intellectual property rights (IPRs) established by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The guidelines for compulsory licensing of patents are outlined in Section 21 of the Act.

Section 21(1) of the Bangladesh Patent Act, 2022 enables the government to impose a compulsory license on any agency of the government or other specific entities for the following reasons: (a) when it is essential for the growth of public interest, food safety, health, security and any other important industry of the national economy; (b) when a court or administrative body determines that the patentee is utilizing the invention in a way that is unfairly competitive, and giving a compulsory license may stop such discriminatory activity; (c) when the patent holder abuses their exclusive rights or fails to stop the licensee from abusing the exclusive right; (d) through manufacture or import, the patented innovation is not being made easily accessible in Bangladesh in sufficient quantity or quality, or at a defined reasonable price; and (e) when a second patent application makes a claim for an invention that is connected to the innovation

made in the first patent and is connected to technological advances that are economically significant. It is impossible to use the second patent without also infringing the first patent. Section 21(15) has mentioned the conditions if compulsory license is given under the clause (e) of sub-section (1).

The conditions are - (a) the owner of the first patent is authorized to a license under reasonable circumstances to make use of the invention covered by the second patent; as well as (b) without transferring the right to the second patent, the license for the first patent cannot be assignable.

The innovation must only be utilized for the reason for which the license is awarded, and also the patentee must pay any remuneration that the government may impose. The government will evaluate each application for a compulsory license independently as per the sub-section (2) of the Act. It also talks about the conditions when compulsory license shall not be granted or applied. If a patent hasn't been used within 4 years of the date of application or 3 years of the date of grant due to insufficient production as mentioned in clause (d) of the sub-section (1) or non-working of the patent, in such situation no compulsory license shall be issued except a patent holder can provide a reasonable ground for their inaction.

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LEGISLATIVE UPDATES

Compulsory Licensing Feature in the New Bangladesh Patent Act, 2022

According to the section 21 (7) of the Bangladesh Patent Act, 2022 the government may revoke the compulsory license if it is contented that a reasonable reason exists for rescinding its decision or recurrence is impossible upon the application of the patent owner after granting the parties a chance to be heard. Besides, section 21 (8) also says that no matter what is stated in sub-section (7), the Government may not revoke the Compulsory License if it determines that mitigating factors support the decision to protect the legal interest of any State agency or person appointed by it or if sub-section (1) is granted under clause (b) of the Compulsory License to address unfair competition and the conditions of the Compulsory License are likely to repeat. A compulsory license may also be subject to certain conditions, which are listed in the section 21(10). These conditions include (a) using the invention for manufacture or import into Bangladesh; (b) the patent holder terminates the license; and (c) the patent holder uses the invention continuously, subject to Section 24's rules.

Section 21(11) stipulates that a request for a contractual license from the patent owner must be made in writing and submitted to the authority together with documentation demonstrating that the requestor was not successful in obtaining the requested license under acceptable commercial conditions and within a reasonable time frame.

Furthermore, in the aforementioned circumstance, the patent holder must submit an application to the government within 6 (six) months of receiving the applicant's application and after being informed of the patent holder's decision to reject the voluntary license proposal. The government may grant compulsory licenses to pharmaceutical products and semi-conductor technology sectors on specific circumstances as mentioned in section 21(18) and 21(14) of the Bangladesh Patent Act, 2022. In case of semi-conductor technology a compulsory license shall only be issued if the invention purpose is non-commercial.

Annual General Meeting (AGM) in a Nutshell



The Annual General Meeting, or AGM in short, is one of the most important checks and balances for company business. Though there are different kinds of business with distinct characteristics, many people prefer company business as the liability is deemed lower. However, to protect the rights of the shareholders and ensure good governance of the company, AGM plays a significant role.

In the beginning, we need to understand what an AGM is. An Annual General Meeting is a yearly gathering of a company's interested shareholders. The company may make multiple meetings with its shareholders as well as with only the Board of Directors. But it is a statutory obligation of every company to arrange at least one AGM in every calendar year according to section 81 of the Company's Act 1994.

AGM is different from other meetings, known as 'extraordinary general meetings', in terms of its distinct objectives and purposes. The statute doesn't specify the objects, but the main goals in a typical AGM are: making the shareholders aware of the actual progress and well-being of the companies and declaring the profits or losses of the previous year. In addition, laying the annual accounts, and auditor's report, electing the new board of directors, and appointing an auditor if required are also important objectives of a typical AGM.

Below are some of the components of an AGM:

Frequency: According to section 81 of the Company's Act 1994, there can't be a lapse of more than fifteen months between two subsequent AGMs. In the case of the first AGM after incorporation, it needs to be held within a period of not more than eighteen months. However, in the proviso of this section, the registrar is given the authority to extend the duration by a period not exceeding ninety days or the 31st of December of that calendar year.

In the case of *Sree Meenakshi Mills Co. Ltd. vs. Asstt. Registrar of Joint Stock Companies*, AGM of a company, which was to be held in December of 1934, was adjourned to March 1935. After the meeting in March, the next meeting happened in February 1936. It was held by the court that there was no meeting in the calendar year 1935. Therefore, we can conclude from this case that if a meeting is adjourned and happens in the subsequent year, it will still be deemed to have been held in the year it was initially supposed to be held.

Notice: A notice to all the shareholders must be given as per Regulation 50 of Schedule I of the Company Act 1994. But shorter notice can be provided if all the shareholders consent to it.

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Annual General Meeting (AGM) in a Nutshell



Place: In the case of East Pakistan Timber Merchants Group, Chittagong v. The Registrar, it was held that the meeting could not take place legally in a location other than the one mentioned in the company's Articles of Association and the Memorandum as per Regulation 47 of Schedule I of the Company Act 1994 unless relevant articles were amended.

Quorum: According to Regulation 52, the minimum number of members needed to commence an AGM for public companies is five. For private companies with a number of shareholders less than six, a minimum of two members need to be present, and for private companies with a number of shareholders more than six, a minimum of three members need to be present.

Election of Board members: One of the most essential rights of shareholders in an AGM is to give votes to decide on directors for the board. The voting procedure will be the same as in section 85 of the act. If no poll is demanded, then every present shareholder will have one vote, and whoever gets more votes wins. But if a poll is demanded, then every shareholder will have one vote in respect of each share held by him.

Now let's talk about the consequences of not arranging an AGM according to the statutory requirement. If a company fails to arrange an AGM every year, on the application of any member of the company, the court may order or direct the company to hold an AGM and order any necessary consequential relief as per section 81(2) of the act. Moreover, as per section 82, the court may penalize the company and the officers responsible, to a fine not exceeding 10,000 takas, and for every continuing day a further fine which may extend to 250 takas.

It's needless to say that Annual General Meetings are crucial for all parties involved, especially the stakeholders. Since stakeholders have a direct interest in the functioning of the company, they are entitled to information regarding how the company is functioning. In AGMs, the board provides the shareholders with all such documents, which are certified by the board as well as auditors. On top of that, AGMs are crucial for the shareholders because they get to give their opinions by casting votes on different policy matters such as which members would constitute the board of directors, whether the company should proceed with a merging or acquisition plan, etc. In addition, the reason AGM is important for all involved is that it creates a check and balance for the company and reduces the scope of abuse of power.

We have previously discussed what important role shareholders play in an AGM. Unfortunately, we have seen a recent depressing trend amongst the shareholders to be apathetic towards voting, or being more interested in privately discussing important issues with the directors. This destroys the purpose of the concept of AGM because then the check and balance system doesn't work. In a nutshell, we have talked about how important this meeting is and also the current problem that we are facing. All in all, it can be said that AGM is an important tool for the proper functioning of companies.



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