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# NEWS LETTER

OCTOBER 2022



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# Bangladesh - a Country of Immense Opportunities

Bangladesh has been identified as “an oasis of growth” and “a country of immense opportunities” by one of Asia’s leading bankers. Here’s a look at how the country keeps moving forward despite all the international economic challenges. Bangladesh has stood out for its resilient economy, which grew by more than 17% in three years despite a global pandemic and the economic shocks which have gripped so much of the world. Renowned International banker Benjamin Hung, the chief executive of Standard Chartered for Asia, was in the capital Dhaka recently to look at what’s being achieved in what he called “an oasis of growth”.

Mr Hung mentioned that Bangladesh strikes him as a country of immense opportunities. It is weathering a period of heightened external pressure and economic headwinds that have impacted many economies. With economic growth trajectory remaining stable and with the mitigatory effects of policy actions being visible, it seems that Bangladesh remains on course to achieve sustainable growth.

Mr Hung identified continued investment in infrastructure as a crucial factor, giving the example of the recent completion of the Padma River Bridge, a domestically-financed project that has transformed transportation for much of the country and its neighbours. The Future of Trade report from his bank has described Bangladesh as a hyper-growth market, rapidly progressing towards becoming a major global trade partner.

The high proportion of young educated people is one of Bangladesh’s advantages. The median age is 28, compared to 38 in both China and the USA -and 44 in the European Union.



From 2010 to 2020, Bangladesh achieved the world’s highest cumulative GDP growth. In a decade and a half, it lifted more than 25 million people out of poverty. Last year, the UN confirmed that Bangladesh would graduate from the least developed country category by 2026. It’s a rare achievement and all the more remarkable for what was the second poorest country in the world at independence in 1971.

It’s a story that’s set to continue, with the Asian Development Bank forecasting GDP growth of 6.9% in 2022 and 7.1% in 2023. That involves growing new sectors of the economy to match the success of what’s been achieved in established industries, such as garment manufacturing.

Global awareness of Bangladesh’s economic prowess is too often still confined to the garment sector. It is the second largest in the world and continues to see 25% growth but other exports are expanding. The pharmaceutical industry now exports to 42 countries and other forms of manufacturing are on the rise. It’s a success story that the world needs to notice.



# CASE LAW UPDATE

## Mohiuddin Ahmed and Others -v/s- The State.

Citation: 2012 32 BLD 160

### **Facts:**

The present case is a case of Criminal Revision before the HCD of the Supreme Court of People's Republic of Bangladesh. In the present case, the accused petitioner allegedly teased the family members of Mr. Asmatud Doula, Ex-executive engineer, by repeatedly calling in the land phone and giving threats. Being intimidated, the informant filed a General Diary Entry with the police. The police, thereafter, filed a non-GR case under s506 of the Penal Code, 1860 on the ground of criminal intimidation. Later, police arrested the petitioners under s54 of Code of Criminal Procedure, 1898 without any order from any competent magistrate as it is required under s155(2) of CrPC. The accused petitioner thereafter came to the HCD under s561A of CrPC to seek justice for the grievance caused due to this defect in procedural law by the police.

### **Issues:**

The primary issue before the court in this case is deciding whether it was lawful for the police to make the arrest and proceed with the investigation without any order of any competent magistrate, defined under s155 of CrPC.

### **Judgment: :**

The learned court held that the police were in fact wrong in arresting the accused petitioner without an order from any competent magistrate. The language of s155(2) is very clear on this effect. For any non-GR case, the police first must seek permission from any competent magistrate as defined under s155 of CrPC, 1898.

This requirement is expressly mentioned in the provision for non-cognizable offences. In this case, the learned judge agreed with the petitioner, Mr. Sheikh Muhammad Serajul Islam, that the requirement to take permission from magistrate is a compulsory requirement. As such, it's not possible for the magistrate to take cognizance afterwards, like what happened in this case. Moreover, if this mandatory requirement is not met then the whole proceeding would be vitiated and subsequent cognizance by the magistrate will not cure this defect.

In regards to opposite party's submission, the learned assistant attorney general appearing on behalf the state, opposes the rule but couldn't give any satisfactory clarification regarding the defect existing in this proceeding. However, the offence was under s506 of Penal Code, 1860, which is a non-cognizable offence. In addition, it is a requirement under s155(2) to take Magistrate's order compulsorily before investigating any non-GR case. As such, the learned court held that defiance of the requirement laid down in s155(2) of CrPC, would vitiate the entire proceeding. As a result, the accused petitioner can not be convicted because of this procedural error.

This requirement for non-cognizable offences under s155 is needed to ensure a balance between police's power to investigate and judicial control to prevent abuse thereof. If such control was not placed, it is very much possible that in our socio-political culture, that the police would abuse this unfettered discretionary power. Hence, taking order from competent judicial magistrate before investigating non-cognizable offences limits police's unrestricted discretion. Thus, the requirement under s155 of CrPC, 1898 to take prior order from competent magistrate before beginning an investigation should be strictly maintained- this was the principle established in this case.

# LEGISLATIVE UPDATES

## Bangladesh Securities and Exchange Commission (Securities Market Shariah Advisory Council) Rules, 2022

In Bangladesh, around 35% of securities on Dhaka Stock Exchange (DSE) are Shariah Compliant and last year Beximco issued a Sukuk as the Country's first private sector company and raised 3,000 Crore from the Capital Market. However, there was no central Shari'ah Council to resolve any dispute or controversy assisting the Bangladesh Securities and Exchange Commission (BSEC).

On September 29th, BSEC, issued a notification titled "The Bangladesh Securities and Exchange Commission (Securities Market Shariah Advisory Council) Rules, 2022" which will apply to Islamic Shariah-Based Securities (ISBS) and any matter towards the development of Islamic Capital Market (ICM). The council formed under this Rule will provide advisory services to the BSEC, issuing pronouncements related to ISBS, or any matter related to the securities market.

The terms of reference for the appointment of the members will be defined by the BSEC from time to time, or in the letter of engagement. The members of the council will serve a maximum of 2 (two) terms consecutively, and each term will be a maximum of 03 (three) years. The Commission shall fix the honorarium of the members of the SAC by order in writing from time to time.

Shari'ah Advisory Council (SAC), will be an independent body of 09 (Nine) members formed by the commission under this Rule which will comprise of specialized jurists in Fiqh al-Muamalat. Among 09 members, at least five (05) members will be Shariah Scholars while the remaining four will be experts.

The chairman of the advisory council will be elected by the council members from the five-member scholars.

While selecting a Sharia'ah Scholar Member, there are some criteria which shall be fulfilled by a Scholar in order to be selected by Commission to be a Scholar Member:

1. Qualified as Dawr-e-Hadith (Takmil) or Kamil or Post Graduate Degree on Islamic Studies, Fiqh, Islamic Law or Islamic Jurisprudence with profound knowledge in Fiqh or Usul al Fiqh (shari'ah jurisprudence), especially in Fiqh al-Muamalat (Islamic commercial jurisprudence);
2. Shall have additional qualification having takhassus or specialization or any other certified degree on Fiqh or shari'ah or Fiqh al-Muamalat;
3. One must have at least ten (10) years professional experience, of which at least five (05) years as a member of Fatwa Board or Shari'ah Board or faculty or mufti of any reputed Darul Ifta or Department of Islamic Studies or Department of Islamic Law or Shari'ah;
4. Can not to be a member of any SSB r Board of Directors of any issuer or originator after being selected as a member of SAC and shall have a good understanding of legal and regulatory framework of the Islamic jurisprudence related to financial sector.

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# LEGISLATIVE UPDATES

## Bangladesh Securities and Exchange Commission (Securities Market Shariah Advisory Council) Rules, 2022

On the other hand, the Expert Members of SAC shall meet the following criteria:

1. Post-graduation in any business discipline or Islamic finance or economics or law;
2. Shall have basic understanding of shari'ah principles, preferably in Islamic banking, Islamic finance or securities market;
3. At least ten (10) years of professional experience in the relevant area;
4. The expert member shall not be member of any SSB or Board of Directors of any issuer or originator after being selected as a member of the SAC and the expert member is not a bank loan defaulter as per CIB report of Bangladesh Bank.

In order to proceed in a meeting, it is mandatory to have a presence of 05 (Five) members and among the five members at least 03 (three) members shall be Scholars. The meeting can be held in both physical and virtual method.

The commission has made Securities Market Shariah Advisory Council Rules to increase the supply of Shariah-based securities. It was necessary for such a council to support the Commission in specific issues, regarding opinion on the Shari'ah issues to any court of law and to provide services to resolve and settle complaint and dispute related to ISBS and ICM or Security market.

### In Other News

#### FDI Flow in Bangladesh Soars 37%, Despite Economic Unsteadiness

Net foreign direct investment to Bangladesh rose 37 percent year-on-year to \$3.43 billion in the last fiscal year, a positive development for the economy amidst the ongoing foreign exchange volatility.

The country is suffering from the deterioration of the foreign exchange reserves, caused by higher import bills and lower-than-expected export and remittance receipts.

Net FDI inflows are the value of inward direct investments made by non-resident investors, including reinvested earnings and intra-company loans. This excludes the amount that goes out of a country through the repatriation of capital and repayment of loans.

Fresh investment, or equity capital, surged 65 percent year-on-year to \$1.35 billion in the financial year that ended on June 30, data from the Bangladesh Bank showed.

The textile sector was the biggest gross FDI recipient, netting \$1.16 billion in the last fiscal year, an increase of 81 per cent year-on-year. The power sector received \$579 million from \$532 million earlier while non-bank financial institutions secured \$7.92 million compared to \$267 million a year ago.



## Effects of Amendment in Labour Law Concerning Transfer of Ownership or Shares



In September 2022, the legal frameworks committee of Bangladesh brought a vast change in the existing legal enactment of labour law in line with the International Labour Organization (ILO). Basically, there are two legal enactments which regulate the labour related dispute settlement policy. One is the Bangladesh Labour Act, 2006 and Bangladesh Labour Rule, 2015. Mainly, the changes have been brought in the second one, the Bangladesh Labour Rule, 2015. Previously, there were no certain provisions for settling the dispute of labour rights when the ownership of a business or a share of a business is transferred.

Therefore, this amendment has clarified the legal obligations of the employer in such cases. For this purpose, two new sub-rules have been added under rule 32 of the Bangladesh Labour Rule, 2015 which are rule 32(c) and (d). According to rule 32(c), in case of transfer of ownership or shares in factories, or establishments if the workers are willing to work in the transferred factory or establishment, their employment shall be continued. Otherwise, the workers shall be entitled to benefits under the provisions of sub-section (4) of section 27 of the Bangladesh Labour Act, 2006. Again, if the transferee owner does not want to accept the liability of the workers, the former owner shall retrench the workers before the completion of the transfer process and pay the legal dues as per the provisions of Section 20 of the Act.

That means when a transfer of ownership or shares in factories, or establishments takes place, both the labour and employer have the option to choose whether they want to continue together or not. In this case, section 27(4) of the Bangladesh Labour Act, 2006 is prescribed to follow., if the labour is not willing to continue to do work under the transferred factory or establishment.

Here, the law says, if a permanent employee leaves their position under this section 27(4) and has completed five years of continuous service or more but less than ten years, they will get fourteen days of pay for each year of service that has been completed. If he has worked for ten years or more, the rate of remuneration is increased to thirty days' salary. Again, if the labour wants to continue in the transferred factory or establishment, their employment shall be continued as per his previous employment.

On the other hand, if the transferee owner does not want to accept the liability of the workers, he has to follow the provisions of section 20 of the Bangladesh Labour Act, 2006. According to this section, No employee who has worked continuously for the employer for at least a year may be let go by the employer unless the employee has received one month's written notice stating the reasons for the dismissal. Also, he will receive payment in the amount of thirty days' worth of earnings or, if applicable, gratuity for each year of service that has been completed, whichever is higher between the two of them.

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## Effects of Amendment in Labour Law Concerning Transfer of Ownership or Shares



No notice, as mentioned in this section, shall be necessary for a worker to be retrenched. The worker so retrenched, shall be paid fifteen days wages in addition to the compensation or gratuity, as the case may be, which may be payable to him.

Different Agreements between the Predecessor and the Landlord in respect of any outstanding balance the liability shall be imposed on the transfer receiver. The law provides that no worker belonging to a particular category of workers is to be retrenched unless he or she is the last person to be employed in that category. Moreover, if any dispute arises concerning such payment, section 124A shall be followed to settle the dispute or through negotiations with the trade union of the concerned establishment, if any. To settle the claims raised within a maximum of 20 days, take up settlement activities through discussion or conciliation meetings with the concerned owners or authorities. Moreover, all the information about the transfer of the factory or establishment by the new owner shall be notified to the Inspector General or the inspector authorized by him by giving a notice within 7 (seven) working days.

As per rule 32(d), it states that the details of permanent closure of production activities of factories or establishments or transfer of ownership should be reported to the Inspector General or the authorized officer in accordance with Form-10.

As a whole, these are some basic changes that are brought concerning legal rights and obligations of the stakeholders, if a transfer of ownership or shares in factories, or establishments are taken place.



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