

# Legal Insights

## ADB Forecasts Bangladesh GDP to Grow at 5.8% this Fiscal Year

The Asian Development Bank (ADB) has forecasted that Bangladesh gross domestic product (GDP) would grow at highest 5.8% this fiscal year. Despite headwinds from the epidemic, Bangladesh's GDP growth is forecast higher in FY2021-22 in line with a projected global economic rebound, according to the latest ADB report Asian Development Outlook (ADO) 2021.



The 6.8% growth forecast was made before the start of the second wave in March this year, but now ADB thinks the growth rate may be between 5.5% and 5.8% due to the economic fallouts of the second wave of the pathogen.

According to the ABD report, future economic growth will depend on recovery in domestic economic activities fueled mainly by implementation of stimulus packages, strong inflow of remittances, and rebound in global trade amid projected growth in major export destinations. Current account balance is expected to cross into surplus of 0.7% of GDP in FY2021, contributed by remittance growth. The main risk to this growth projection is further surge of Covid-19 cases and delayed availability and supply of vaccines both globally and domestically.

The report also said that continued strong remittance inflow is likely to support domestic demand with growth in private consumption. Remittances from workers overseas increased by 35.1% in the first 9 months of FY2021 due to the 2 % cash incentive offered by the government and reduced documentation requirements.

Private investment is expected to pick up as moderate growth in private sector credit improves confidence. Higher public investment is forecasted as the government expands capital spending. However, the ADO report also forecasted that the inflation is expected to reach 5.8% in FY2021 from 5.7% of last fiscal as price pressures are increasing from higher public expenditures to implement stimulus measures and a rise in global food and fuel prices due to pick up in global economic activity.

# CASE LAW UPDATE

## Md. Ataur Rahman Vs. Bangladesh [Writ Petition Case No. 824/2021]

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

The petitioner, a dual citizen of both Bangladesh and Sweden is a citizen of Bangladesh by birth and carries on business in Sweden. The Anti-Corruption Commission opened an investigation against him and the petitioner submitted required documents as per the Commission's demand. Later, the petitioner learned that the ACC has requested the relevant authorities to impose embargo upon the petitioner to leave Bangladesh.

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

Whether this restriction of movement has violated the fundamental right of the petitioner under Article 36 of the Constitution of Bangladesh, i.e. freedom of movement?

### ***Decision of the court:***

High Court Division of Supreme Court, made absolute the rule Nisi issued upon the Anti-Corruption Commission as to why should not the order under Nothi No.00.01.0000.501.01.113.19-31084 /1(3) dated 20.12.2020 passed by the Anti-Corruption Commission asking the relevant authorities (Immigration Police Super, Airport) to impose embargo upon the petitioner to leave Bangladesh should not be declared to have been passed without lawful authority and is of no legal effect.

### ***Reasoning of the court:***

The court after careful consideration of the facts and arguments advanced observed that, "a reasonable restriction under article 36 must be imposed by satisfying both the requirements i.e. imposed by law and in public interest. Accordingly, in the present case there is no law for restriction of international travel for personnel under any criminal investigation or Anti-Corruption Commission investigation to be specific. The court further observed that, for restricting a person from going abroad there must be specific allegation for which an order from a competent court is required but without any such restriction, an embargo upon the traveling of the petitioner will be an abuse of the process of law. In absence of such court order or ongoing case, the Government is not allowed to restrict a person from going abroad at its discretion simply because he may be required to stand trial at a future date. The rule was made absolute.

## Passport - The Shopping Document

E-commerce, the global trend of online shopping with the untiring window-shopping and the access to global brands beyond border have injected a big boost in the Bangladesh market. The coordination between investors and the customers results a manifold growth of the industry and it has been confidently projected that by 2023 the industry may worth more than \$3 Billion. The customers are now reaching out to the global markets, availing the banking blessing of International Credit and/or Debit Cards.



**E-commerce and the cashless economy:** In modern times, global trend is taking us towards a cashless economy, financial institutions are offering convenient and safer alternatives and/or substitutions of cash dealings. Card payment transaction has significantly been hiked globally including Bangladesh. The globally booming industry, e-commerce would not have reached this growth, had the digital payment system not been substituted the cash payment to this extend. Not only the e-commerce, but the banking sector is also being hugely benefited by cashless trend. E-commerce and online payment is closely interconnected, access to international brands and cross border shopping opportunity has also bringing competition in the domestic market.

**International payments:** Making payments in foreign currencies through International Credit and/or Debit Cards are permitted by the Bangladesh Banks provided that, subject to certain exceptions of Private Foreign Currency Accounts (FCA) and Resident Foreign Currency Deposit Accounts (RFCD), the Cardholders get their valid Passports duly endorsed by the Authorized Dealers.

Chapter-19 of the Foreign Exchange Guideline 2018 enlists a number of transactions in which International Cards can be issued and payments in foreign currencies be made. Among those enlistments, only a few allow individuals to make online payments from home (Bangladesh) for personal shopping of permitted good and services including subscription of OTT platforms, online libraries, purchasing downloadable books and software, etc. Rest of the enlistments are for specialized and/or for professional business transactions such as, Export Retention Quota Account holders for exporters, International Cards for Hajj pilgrims, International Cards for Private and Government officials for official purposes, etc. An individual can only avail such facilities by either utilizing the Annual Personal Travel Quota, or by using Resident Private Foreign Currency Deposit Accounts (RFCD), in both cases having a Passport is pre-requisite. The former needs a valid Passport for endorsement and the latter applies only to those who returned from abroad with foreign currencies.



**Annual Personal Travel Quota:** As per Chapter 19, an individual can be issue International Cards / foreign currency against his or her annual personal travel quota pursuant to Chapter-12 of the Guideline. The Chapter mainly prescribes the rules and limits for issuing foreign currencies in favour of different individuals travelling abroad for various purposes. As per the prescribed rules, an International Cardholder by endorsing his/her valid Passport can spend maximum \$12,000 per annum from his/her annual travel quota.

The Guideline not only treats the Card users as travelers in terms of spending limits but also requires both to have a valid passport irrespective of cardholder not being the actual traveler at all.

**Assessing the “passport” endorsement criterion:** According to the Guideline and a recent circular published by Bangladesh Bank on 21st January 2021, endorsement on passports is applicable against release of foreign exchange either in cash or in non-cash form like international cards, etc. or both out of eligible entitlements of travels. The endorsement is equally applicable for release of foreign exchange in cash irrespective of entitlements/sources to persons other than those holding foreign passports. However, foreign exchange can be released without endorsement on passports in non-cash form like international cards, etc. out of balances held in FCA and RFCD Accounts of concerned accountholders. The ADs in addition to the endorsement, are also required to report the release of such foreign exchange to 'Online Foreign Exchange Transactions Monitoring System' of Bangladesh Bank

Passport has always been known as a primary travel document required when travelling beyond the border of the country. Obtainment of such document has never been legally bound unless the concerned person is planning to visit abroad for whatsoever purposes including tourism, medical treatment, study, employment, etc. In one hand, in modern times, visiting abroad for indefinite reasons are common phenomenon but on the other hand, there might be uncountable reasons to someone having no plan or necessity to step outside the country's border, and hence he/she might not want to have a passport ever. The constitutional right ensures the freedom of movement, but it does not oblige anyone to actually move, having and not having a passport should be left on one's own will.

**The Practical hurdles and Associated Risks:** For ease of understanding lets imagine a young talented student by doing a parttime job, earns enough to afford his/her personal allowance. He/she gets paid through proper banking channel and he/she, for ease of transaction, possess a debit card. He, being a prolific reader and researcher needs books from different genres, he wants to subscribe to an internationally recognized e-library such as Amazon Kindle or Scribed requiring international payment of \$10/month. At this stage, he does not have a passport and he does not even plan to visit abroad. The question arises, what should be his/her appropriate mode of action?

It is not hidden from anyone including the concerned authority that there are plenty of unregulated illegal, insecure and unsafe options widely circulating on deep and even on surface web, there are indefinite Facebook groups and pages offering every needful service including subscriptions of different OTT platforms, e-libraries, music streaming platforms and what not. We are also aware of numerous unsafe and unreliable websites offering the same services charging unreasonably higher price.

**Relevant provision of Indian jurisdiction:** *Master Circular on Miscellaneous Remittances from India – Facilities for Residents:*

#### **Paragraph A.2 (Sale of Exchange)**

Authorised Persons may release foreign exchange for travel purposes on the basis of a declaration given by the traveler regarding the amount of foreign exchange availed of during the financial year. It is not mandatory for Authorised Dealers to endorse the amount of foreign exchange sold for travel abroad on the passport of the traveler.



#### **Paragraph A21 (International Credit Card):**

Residents can use ICCs on internet for any purpose for which exchange can be purchased from an Authorised Dealer in India, e.g. for import of books, purchase of downloadable software or import of any other item permissible under Foreign Trade Policy (FTP). There is no aggregate monetary ceiling separately prescribed for use of ICCs through internet.

**Need of relaxation or finding alternatives:** Considering the reality of globalization with the increasing demand and needs of international payments for essential goods and services, the authority must take the present time situations, the safety, security, convenience and progressive demands of residents into account. The authority being responsible for monitoring and regulating the foreign exchange for maintain the balance of foreign reserve, it may ease or amend certain requirements. The authority may give a general permission to a certain limit (\$200/month) of international payments without passport endorsement, or the authority may also allow alternative documents (such as National ID and/or Birth Certificate) for endorsement if necessary, to monitor such transactions.



## In Other News

### Bangladesh Overtakes other High-Income Countries in Inclusive Recovery from Covid-19 Economic Fallout

Bangladesh's recovery from the economic fallout of the first pandemic wave has been more inclusive than some of the high-income countries of the world. This has been suggested in a recent published survey result. The International Food Policy Research Institute (IFPRI) and Cornell University used pre-pandemic data and conducted two rounds of phone surveys on the same sample of over 2,000 rural households in June 2020 and in January 2021 to track the experiences and impacts of the Covid-19 crisis over time in Bangladesh.



In between June 2020 and January 2021, proportion of pandemic-induced unemployment witnessed a 70% decline. In June 2020, the month after the government-announced lockdown in Bangladesh ended, 17.2% of main household earners of a sample population in rural Bangladesh reported being unemployed, but that percentage dropped to only 5.1 in January 2021. People living in moderate to severe food insecurity also marked great improvement from 45% in June last year to only 16% in January this year. The survey findings suggested that unlike experiences in some high-income countries, recovery has been relatively inclusive in rural Bangladesh.

The researchers stated that the lower-income adults in the United States continue to be left behind, with consistently higher rates of unemployment and income losses compared with "better off" adults months after the initial onset. They also added that the European Union economy remains stifled amid recurring waves of the pandemic, with the EU economy commissioner predicting that the economy will not recuperate until as late as 2023.