

## Chamber Update



Barrister Ferdausur Rahman, Partner of A.S & Associates and Legal Consultant to World Bank Group's Ease of Doing Business Program, met with the Honorable Executive Chairman of Bangladesh Investment Development Authority (BIDA) on 16<sup>th</sup> February 2020.



With him also were the World Bank's Delegation team from USA, together with other senior officials from International Finance Corporation (IFC) and BIDA. Current scenario of Ease of Doing Business Bangladesh, was discussed in the meeting together with current improvements and future activities.

# Legal Insights

**Remittance grew by nearly 18 per cent to a record \$18.42 billion**

**According to Experts,  
Incentive spurred growth**



## Bangladesh: Remittance rises by 18pc in 2019

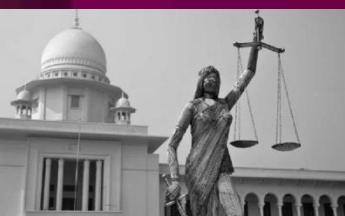
Inward remittance grew by nearly 18 per cent to a record of \$18.42 billion in 2019 and this was possible for a government effort to incentivize remitters. According to the central bank's statistics, the figures jumped from \$15.53 billion in 2018. Financial incentive along with the depreciating mode of taka against dollar has helped boost the influx in the last calendar year, according to bankers.

The remittance inflow was estimated at \$1.69 billion in December last, up by nearly \$132 million from that of the previous month. In November 2019, the amount stood at \$1.55 billion. The amounts was \$1.18 billion in November of 2018.

The upward trend in influx is expected to continue in the coming months as the Government has announced 2.0 per cent incentive for remittance receipts. The Government allocated Tk 30.60 billion in incentive in the budget for FY 20 to encourage migrant workers to send their money back home through legal channels.

The local currency's exchange rate depreciated significantly against that of dollar in recent months mainly due to a higher demand for greenback to settle import bills. Meanwhile, taka depreciated by Tk 1.0 against dollar in the inter-bank forex market from January 02 to December 30.

The Government's incentive is encouraging more and more non-resident Bangladeshis to remit their hard-earned money using official transferring and banking channels instead of illegal "hundi" system, according to experts. The central bank earlier took multiple measures to encourage the expatriates to send their money through the formal banking channel only to help boost the country's foreign exchange reserves.



# Legislative Update

## Regulation

The Government has recently formulated the **Domestic Flight Management of Non-schedule Route Regulation – 2020**. Under the Regulation, Air Operators must obtain Air Operator's Certificate (AOC) from the Bangladesh Civil Aviation Authority – 24 (twenty-four) hours prior to the operating in a non-schedule route, failure to do so may result in cancellation of license.

## Bangladesh Bank Circular: Share Money Deposit

The Bangladesh Bank through circular no. 02, dated 05 February 2020 require the Bangladeshi companies from the date of receipt of money from the foreign investors to complete the issuance shares within 360 days of receiving money for this purpose. The Share Money Deposit must not be used in any purpose other than the main business of the company i.e. the fund cannot be used in any interest/profit bearing financial instruments and until the Share money deposit is converted to equity it may not be calculated as equity component for the purpose of foreign loan or Take term loan. If total share capital of the company exceeds the exemption limit as fixed by the Bangladesh Securities and Exchange Commission (BSEC) after receiving Share Money Deposit, consent from BSEC has to be obtained.

**Repatriation of residual money payable to foreign shareholders in case of winding up of a company:** The Bangladesh Bank through circular No. 01, dated 05 Feb 2020 outlined the procedure for transfer of residual money payable to foreign shareholders in case of winding up.

(a) in case of winding up of a company by the Court or subject to supervision of the Court, for remittance of money payable to foreign shareholders, (ADs) shall submit application to Foreign Exchange Investment Department (FEID), Bangladesh Bank, Head Office, Dhaka along with an order of the honourable Court evidencing endorsement of the amount determined to be distributed to the shareholders after paying up all the liabilities and payments as per law and a certificate confirming that all liabilities in Bangladesh including tax claims and other statutory payment obligations have been fully paid, issued by liquidator/official receiver/or such person as the Government may, by notification in the official Gazette, appoint for the purpose.

(b) in case of voluntary winding up of a company, for remittance of money payable to foreign shareholders, ADs shall apply to FEID, Bangladesh Bank, Head Office, Dhaka along with all relevant documents, mutatis mutandis, including but not limited to the list given in **Annexure-A**.

ADs shall forward the permission request for remittance of money payable to foreign shareholders, only after being satisfied that the target company has complied with the provision of Paragraph-2(A)(c) & 2(B), Chapter-9, Volume-I of Guidelines for Foreign Exchange Transactions- 2018 or similar guidelines in force at the time of issuance/transfer of share

## Cox's Bazar

The Government of the People's Republic of Bangladesh through gazette notification dated 26 January 2020 declare Cox's Bazar as an "Expensive Town" considering the price of daily essentials including House rent, transportation cost, Food and clothing product etc.

# CASE LAW UPDATE

## STATE VS SAIFUL ISLAM (MD) AND ANOTHER

Reported at 71 DLR 549

### Facts of the Case:

The informant, Torab Ali lodged a first information report (FIR) with Moheshpur police station, Jhenaidah on 26-06-2008 alleging, *inter alia*, that his daughter Alpana Khatun, a minor girl of 7 years was missing till 01:00 pm on the previous day. On the following day at about 7.00 am, Moyna Begum (PW 2) saw her dead body in a jute field owned by Moshiur Rahman at village Shibanandapur. On receipt of the news, he along with some other villagers rushed the jute field and saw her dead body lying. Her neck was encircled with some jute plants and her right eyeball was extracted. It was presumed that some unknown miscreants took her to the jute field with an ill motive and killed her. It was also suspected that before death, she was raped.

### Issue Before the High Court Division of the Supreme Court

Whether the joint criminal appeal of the condemned prisoners challenging the judgment and order passed by the Nari-o-Shishu Nirjatan Daman Tribunal, Jhenaidah be granted.

### Decision

The Death Reference under section 374 of the Code of Criminal Procedure has been made by the judge, Nari-o-Shishu Nirjatan Daman Tribunal, Jhenaidah for confirmation of sentence of death awarded upon the condemned-prisoners Md. Saiful Islam and Arif Hossain by judgment and order dated 25-05-2008 passed in Nari-o-Shishu Nirjatan Damon Tribunal Case No. 4 of 2009 arising out of Moheshpur Police

Station Case No. 23 dated 26-06-2008 corresponding to GR no. 112 of 2008 under section 9(3) of the Nari-o-Shishu Nirjatan Daman Ain (2000).

The learned Judge also imposed fine of Tk. 1,00,000 upon each convict. The condemned-prisoners jointly preferred a regular appeal being Criminal Appeal No. 7223 of 2011 challenging the self-same judgment and order. Both the matters have been heard together and are disposed of by this judgment.

The High Court observed that this is correct that the condemned-prisoners are young men and having no criminal record. But the proved facts are that the victim was a defenceless minor girl of 7 years of age, the condemned-prisoners forcefully raped her one after another, killed her for no reason and extracted her right eyeball only to mislead and camouflage the occurrence.

The Court held that the gravity of the offence and its nature, i.e. inhumanity in commission of the rape and murder and brutality on a dead body by extracting eyeball of the deceased are so aggravating that cannot overweight the mitigating circumstances of their youth age or a clean previous record. Under the circumstances, the court thinks this is a fit case of death sentence. It would set an example of deterrent punishment against the heinous offence and bring confidence on the suffering people on criminal justice system.

Accordingly, the Death Reference has been accepted and the sentence of death awarded upon the condemned-prisoners has been confirmed by the High Court Division. The said criminal appeal was dismissed.

## Improved Protection for Minority Shareholders

In continuation of the positive reforms to improve the investment climate of the Country and strengthening the overall legal framework for investors, recently Bangladesh Security Exchange Commission has issued new mandatory requirements for businesses. These reforms will improve the protection for minority investors in a company and additionally will increase Bangladesh's points in the Protecting Minority Investors Indicator in the Ease of Doing Business Ranking.

### ***Following changes were introduced:***

1. Extent of disclosure requirement has been increased as the companies under the jurisdiction of BSEC will be required to make immediate disclosure of any transaction, including description of the asset forming the subject matter of the transaction, nature & consideration of the transaction and any conflict of interest involved in the transaction. Until the recent change, companies were under the obligation to disclose any price sensitive information within 30 minutes of the transaction, however, now the scope of the disclosure has been specified, if not widen as well. The notification can be accessed via the following link (clause-C of the Notification)

[https://www.sec.gov.bd/slaws/Notification\\_05.02.2020\\_\(2\).pdf](https://www.sec.gov.bd/slaws/Notification_05.02.2020_(2).pdf)

2. Extent of General Shareholders' right has been enhanced through requiring prior approval of shareholders' for any sale of 50% or more of Company's asset. Previously, the companies were under the obligation to take prior approval of sale of 1% or more of company's asset but such approval was only necessary if the sale was part of a Related Party Transaction. As the limitation left room for an apparent non-related party transaction to be completed without obtaining approval of shareholders, minority shareholders' were not protected. With this reform, some degree of rights of general and minor shareholders' will be ensured.

The notification can be accessed via the following link (clause-B of the Notification)

[https://www.sec.gov.bd/slaws/Notification\\_05.02.2020\\_\(2\).pdf](https://www.sec.gov.bd/slaws/Notification_05.02.2020_(2).pdf)

3. Extent of ownership and control is likely to improve significantly as compliance with the Corporate Governance Guidelines has now being declared as legally mandatory and punitive measures, including delisting in appropriate cases, have been introduced in case of failure. Previously, existing provisions of the Guidelines were ensured on 'compliance' basis only, requiring certification of compliance. However, now, with the recent notifications issued by BSEC, all the requirements imposed by BSEC, including those referred in the Guideline must be complied with on mandatory basis. With this reform, prior existing control mechanisms, such as, *inter alia*, prohibition on concentration of power through same person being appointed as Managing Director/CEO and Chairperson of the Board, requiring independent and nonexecutive board members for check and balance, and ensuring separate audit committee of board for effective oversight etc. will become legally mandatory, supported by punitive measure in case of non-compliance. The notification can be accessed via the following link:

[https://www.sec.gov.bd/slaws/Notification\\_05.02.2020\\_\(1\).pdf](https://www.sec.gov.bd/slaws/Notification_05.02.2020_(1).pdf)

4. Last but not least, extent of corporate transparency will be increased through mandatory requirement of disclosure of board members' primary employment and directorships in other companies. As per the recent notification, every board member, during appointment and re-appointment, must submit these information and the disclosure shall become part of Directors' Report. This will enable general shareholders' to be aware of any potential Related Party Transaction and they will be able exercise their power in making informed decision. The notification can be accessed via the following link:

[https://www.sec.gov.bd/slaws/Notification\\_05.02.2020\\_\(3\).pdf](https://www.sec.gov.bd/slaws/Notification_05.02.2020_(3).pdf)

As mentioned above, luckily, the above changes will also have the positive impact on the Ease of Doing Business Ranking for Bangladesh, in the Protecting Minority Investors Indicator, as well as in the general ranking.