

## Chamber Update



**A.S & Associates**  
Tier - 1  
Firm in Bangladesh



**A.S Bari**  
Ranked Lawyer



**Ferdaus  
Rahman**  
Ranked Lawyer



**Farhana  
Khan**  
Ranked Lawyer

**LEGAL 500**

The purpose of The Legal 500 is to help in-house lawyers and legal teams find the right advisors through law firm rankings and editorial. The rankings are based on feedback from 800,000+ in-house peers and our access to law firms' deals and confidential matters, which are independently assessed by Legal 500 researchers.

AS & Associates  
Legal 500

A.S & Associates has once again been ranked as a TIER- 1" Firm of Bangladesh in the 2020 Legal500 Rankings. The firm's Managing Partner Mr. A.S.A Bari and Partners Ms. Farhana Khan & Mr. Ferdaus Rahman have also been ranked in the latest ranking.



"Team A.S & Associates" went to its Annual Trip to The Palace Luxury Resort on 16th January 2020. The entire experience was a great opportunity for everyone to get to know each other's family members and bond with each other.

# Legal Insights

**The country's economy will outshine most Asian Giants with its presence as the 30<sup>th</sup> Largest Economy in the world by 2024**



## Bangladesh economy to outshine Malaysia, Singapore, Hong Kong by 2024

According to a global report, titled World Economic League Table 2020, of the Centre for Economics and Business Research (CEBR), Bangladesh's economy will outshine the economy of Malaysia, Hong Kong and Singapore with its presence as the 30th largest economy in the world by 2024. The report also stated that the country's economy will further climb from the 40th place in the World Economic League Table in 2020 to 26th and 25th position respectively by 2029 and 2034.

The world economic league table with its forecast for 193 countries till 2034, also added that with a PPP adjusted GDP per capita of \$5,028 in 2019, Bangladesh is a lower middle-income country.

According to the report, the country's economy performed well last year, recording a 7.8 per cent growth. The population increased at a rate of 1 per cent per year since 2014. This has meant that per capita incomes have grown considerably in recent years. The government debt as a share of GDP rose to 34.6 per cent last year. This is up from 34 per cent in 2018. Despite this increase, the public sector finances remain in good shape. The relatively low debt burden has provided the government with the fiscal headroom to operate a budget deficit of 4.8 per cent in 2019.

The GDP annual growth rate is forecast to slow to an average of 7.3 per cent between 2020 and 2025, according to the report. Over the subsequent nine years, CEBR forecasts that the economy will remain at this impressive rate, which will see Bangladesh climb from 40th place in the World Economic League Table in 2020 to 25th place by 2034.

In the report, China is predicted to become the world's largest economy in 2033, overtaking the US with growth boosted by technology. India, on the other hand, is predicted to overtake Germany to become the world's fourth largest economy in 2026 and overtake Japan to become the world's third largest economy in 2034.



# Legislative Update

## S.R.O. No. 05-Ain/Income Tax/2020

Dated 09 January 2020

As per the Income Tax Ordinance, 1984 (Ordinance No. XXXVI of 1984) Section 44 (4)(b) power granted to the Government, a Private Power Generation company (except for coal-based power generation company) that from the Commercial Date of Operation between 1st January 2020 to 31st December 2022, subject to fulfilment of conditions stipulated in the Private Sector Power Generation Policy of Bangladesh, shall be able to claim exemption on the payable income tax in the following manner:

1. On the company's income generated from electricity generation only, from the date of operation until 31st December 2034;
2. On the income of the Company's foreign national employees, from arrival in Bangladesh for the next three years;
3. On interest payable in connection to foreign loans obtained by the Company;
4. On Royalties, Technical Know-how and Technical Fees payable by the Company;
5. On capital profit obtained in connection to disposal of Company's shares.

Notwithstanding the exemptions granted above, the Company must properly maintain its bookkeeping and submit the income tax returns as per section 75 of the Ordinance.

## S.R.O. No. 4-Ain/Income Tax/2020

dated 09 January 2020

As per the Income Tax Ordinance, 1984 (Ordinance No. XXXVI of 1984) Section 44 (4)(b) power granted to the Government, Inland Revenue Division notification dated 1<sup>st</sup> July, 2013 S.R.O. No.-212-Ain/Income Tax/2013 is amended. For clarity, the S.R.O. No.-212-Ain/Income/2013 is produced there with the amendment: a **Private Power Generation** company (except for coal-based power generation company) that from the Commercial Date of Operation between 1<sup>st</sup> January 2023, subject to fulfilment of conditions stipulated in the *Private Sector Power Generation Policy of Bangladesh*, shall be able to claim **exemption on the payable income tax** in the following manner:

Tax exemption period	Tax exemption Rate
From the Commercial Date of Operation to the First Five Years (1 <sup>st</sup> , 2 <sup>nd</sup> , 3 <sup>rd</sup> , 4 <sup>th</sup> & 5 <sup>th</sup> year)	100%
For the Next three years (6 <sup>th</sup> , 7 <sup>th</sup> & 8 <sup>th</sup> year)	50%
For the Next two years (9 <sup>th</sup> & 10 <sup>th</sup> year)	25%

Notwithstanding the exemptions granted above, the Company must properly maintain its bookkeeping and submit the income tax returns as per section 75 of the Ordinance.

# CASE LAW UPDATE

## STATE VS PROFESSOR DR MORSHED HASAN KHAN

Reported on 71 DLR (AD) (2019) 364

### ISSUE BEFORE THE COURT:

The question raised before the Appellate Division of the Supreme Court of Bangladesh in relation to whether an order of granting anticipatory bail should be for a limited period or not.

### DECISION:

A seven-member bench of the Appellate Division of the Supreme Court of Bangladesh delivered the verdict in this case. The bench was headed by Chief Justice Syed Mahmud Hossain. The Court held that anticipatory bail can be granted only in exceptional cases but not for more than 8 (eight) weeks to the accused. The bail will not continue after submission of charge sheet of the case.

It was also said by the Court that no inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. No attempt should be made to provide right and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualized for the grant or refusal of anticipatory bail. The Court provided few principles for grant of anticipatory bail which can be summarized as follows:

1. The FIR lodged against the accused needs to be thoroughly and carefully examined;
2. The gravity of the allegation and the exact role of the accused must be properly comprehended;
3. The danger of the accused absconding if anticipatory bail is granted;
4. The character, behavior, means, position and standing of the accused;
5. Whether accusation has been made only with the object of injuring or humiliating the applicant by arresting him. Because it is to be remembered that a worst agony, humiliation and disgrace is attached to arrest. Arrest leads to many consequences not only for the accused but for his entire family and at the same time for the entire community.

6. The anticipatory bail being an extra ordinary privilege should be granted only in exceptional cases. Such extraordinary judicial discretion conferred upon the Higher Court has to be properly exercised after proper application of mind to decide whether it is a fit case for granting anticipatory bail not according to whim, caprice or fancy;
7. A condition must be imposed that the applicant shall not make any inducement or threat to the witnesses for tampering the evidence of the occurrence;
8. The apprehension that the accused is in a position to influence, induce or coerce witnesses to desist from furnishing relevant information to the investigating agency cannot be considered to be imaginary and the court ought to have considered that aspect seriously before granting anticipatory bail.
9. In the cases involve grave offence like murder, dacoity, robbery, rape etc. where it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror-stricken victims the accused 42 should never be enlarged on anticipatory bail. Such discretion should be exercised with care and circumspection depending upon the facts and circumstances justifying its exercise.
10. It is to be borne in mind about the legislative intention for the purpose of granting anticipatory bail because legislature has omitted the provision of Section 497A from the Code.
11. It would be improper exercise of such extraordinary judicial discretion if an accused is enlarged on anticipatory for an indefinite period which may cause interruption on the way of holding thorough and smooth investigation of the offence committed.
12. The Court must be extremely cautious since such bail to some extent intrudes in the sphere of investigation of crime.
13. While enlarging an accused on anticipatory bail, the Court must direct the applicant to co-operate with the investigating officer in every steps of holding proper investigation if the same is needed.
14. The anticipatory bail granted by the Court should ordinary be continued not more than 8(eight) weeks and shall not continue after submission of charge sheet, and the same must be in connection with non-bailable offence.
15. The Court granting anticipatory bail will be at liberty to cancel the bail if a case for cancellation of bail is otherwise made out by the State or complainant.

## A look into the Noise Pollution (Control) Rules

The Noise Pollution (Control) Rules 2006 were adopted under Section 20 of the Bangladesh Environment Conservation Act 1995, with the sight of placing the specific guidelines regarding noise pollution and degree of allowable noise in different areas.

The Rules indicate the permitted noise levels for both day and night-time in five types of areas: silent areas, residential areas, mixed areas, commercial areas and industrial areas. The "Silent areas" include hospitals, educational institutions, offices and similar establishments, and their surrounding 100-meter area. Silent areas are areas where the noise level is to be kept at the lowest (50 decibels at day and 40 decibels at night). Permitted noise level for residential areas is 55 decibels at day and 45 decibels at night. For industrial areas, where the highest noise levels are permitted, the limit is 75 decibels at day and 70 decibels at night. According to the Rules, hours between 6 am and 9 pm are to be considered as daytime, and the remaining hours as night-time. A separate range is set for vehicular noise under Schedule-2 to the Rules, and the use of horns is completely prohibited in areas identified as silent areas.

For any social events like weddings, cultural (sports, concerts, melas, hats and bazars) or political events in open or partially open spaces, the sound level however can be exceeded if permission is obtained three days before the event. In case of urgent situations, permissions can be sought one day in advance as well. However, no such permission will allow for such exceedance beyond five hours and in any case, these time extension can be only up to 10 pm.



The Rules also state that no construction machines used for processing and breaking down building materials (bricks, stones etc.) shall be used within 500 meters of any residential areas and such machineries cannot be used between 7 pm and 7 am except without the permission of the concerned authorities.

The Rules provide that any person can contact the concerned authorities with any complaints regarding excessive noise or contravention of the Rules either verbally or over phone or in writing, and it states that officials empowered under the 1995 Act can, in pursuance of the Rules, enter an establishment and confiscate any noise producing instrument.

The Rule also allows the concerned officials to issue a written direction for the violation of the prescribed limits, non-compliance with which is an offence punishable with imprisonment up to 1 month and/or fine up to 5,000 BDT. For repeated offence, one may be imprisoned up to 6 months and/or fined up to 10,000 BDT.

However, these Rules do not apply to religious events in mosques or temples and events on important national events such as Independence Day, Bengali New Year, International Mother Language Day, etc. The Rules also do not apply to important announcements made by governmental organizations and during the official functions of the military or law enforcement agencies. Additionally, an exception is made under the Rules for national and local election campaigns in all areas except the silent areas, subject to the permission of the Election Commission or other concerned authorities.