

Legal Insights

Bangladesh to post Highest GDP Growth in Asia this Fiscal Year – says ADB

The Asian Development Bank (ADB), recently indicated that Bangladesh's economic recovery from the coronavirus-induced downturn would be V-shaped.

ADB unveiled its Asian Development Outlook Supplement (ADOS) on 18 June 2020 and it said that Bangladesh would grow at 7.5 per cent next fiscal year that begins on July 1, helped by strong manufacturing.

Earlier this month, the World Bank projected that the economy would grow at just 1 per cent in fiscal 2020-21 and the International Monetary Fund 5.7 per cent. The Government though is holding out for an 8.2 per cent growth next fiscal year.

According to the ADB publication, Bangladesh economy would grow at 4.5 per cent this fiscal year, the highest in Asia, closely trailing the government's projection of 5.2 per cent. Despite the downward projections, the country is expected to retain the position in fiscal 2019-20 among 46 economies.

In fiscal 2020-21, Bangladesh's GDP growth would be the second-highest in the continent, lagging behind only the Maldives, which would grow by 13.7 per cent if the pandemic slows down. As many as 33 economies in Asia would post negative growth in fiscal 2019-20. Bangladesh had strong growth before the pandemic, but coronavirus has hit export earnings and remittances are likely to have fallen sharply in March and April, the ADOS said.

India, the largest economy in South Asia, would contract 4 per cent in fiscal 2019-20 before rebounding to 5 per cent in fiscal 2020-21. In Bhutan, GDP growth is projected at 2.4 per cent in fiscal 2019-20 before falling to 1.7 per cent in fiscal 2020-2021, the ADOS said. In Nepal, growth in fiscal 2020-21 is projected at 3.1 per cent. Pakistan's economy is projected to contract by 0.4 per cent in fiscal 2019-20 and would grow by 2 per cent in fiscal 2020-21.

ADB's revised growth projections for South Asia

	2020	2021
Afghanistan	-4.50%	3%
Bangladesh	4.50%	7.50%
Bhutan	2.40%	1.70%
India	-4%	5%
Maldives	-11.30%	13.70%
Nepal	2.30%	3.10%
Pakistan	-0.40%	2%
Sri Lanka	-6.10%	4.10%

Chamber Update

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We are proud to announce that **A.S & Associates** has been rated as the
"Best Overall Firm by Aggregate Score" in Bangladesh,
 in the *AsiaLaw Client Service Excellence 2020* ratings.

Also, Heartiest Congratulations to **Ferdausur Rahman**, *Partner A.S & Associates*;
 who has been rated as an **"Outstanding Lawyer"** in Bangladesh



*As part of the research process for asialaw Profiles, asialaw survey buyers of legal services and ask them to assess and rate law firms and lawyers for their quality of service



Legislative Update

Guidelines for White Label ATM and Merchant Acquiring Services

Bangladesh Bank through a circular ([PSD Circular-06/2020, 31 May 2020](#)) has decided to allow **non-bank private sector entities** for setting up necessary infrastructure of ATM and POS for providing services to the customers of Banks, MFSs, PSPs and any other institution as approved by BB. The operator will fall under PSO (Payment System Operator) jurisdiction.

GUIDELINE ON WLAMA

The guidelines shall apply for the issuance of license to interested non-bank entities for establishing White Label ATMs and to perform both the in-store and e-commerce merchant acquisition services. The ATM/POS shall use its own brand name.

Allowable services are:

- a) ATM Cash withdrawal
- b) ATM Funds Transfer
- c) ATM Mini Statement
- d) ATM Balance Inquiry
- e) ATM Bill Payment
- f) POS/QR Retail Purchase
- g) POS/QR Bill Payment
- h) Other services as permissible by Bangladesh Bank

Participants are:

- a) White Label ATM and/or Merchant Acquirer (WLAMA)
- b) Settlement Bank
- c) Issuing Bank or Entity
- d) National Payment Switch Bangladesh (NPSB)
- e) International Payment Schemes (IPS)
- f) Customers

Eligibility:

- a) Licensed PSO by the BB
- b) Paid-up capital of Taka 450 Million if it provides ATM services only, an additional bank guarantees of Taka 100 million favouring BB in case of serving WLAMA; and Taka 100 million paid up capital and Taka million bank guarantee
- c) Must select a schedule bank as a settlement Bank and submit a MOU for inspection

Operational Aspects

- Must have its own switching solutions or use its settlement bank's solution
- Connectivity with NPSB and designated settlement bank for setting transactions
- Must have proper agreement with the related stakeholders
- Must submit strategic plan for its ATM and Merchant acquisition business for the first three years period
- Minimum deployment quantity of 100 ATMs and 1000 POSs/QRs
- Must ensure uninterrupted services
- Customer information must not be stored by a WLAMA
- Banks may choose to issue co-branded cards in partnering with WLAMA
- All guidelines/rules related to ATM/POS shall apply
- May introduce interoperability cash deposit service with prior permission of BB
- Must ensure 24*7 call center and an online portal
- Cannot charge customers directly

CASE LAW UPDATE



The State Vs. Abdur Razza & others.

Reported in 13 SCOB [2020] AD

This Civil Appeal bearing no.460 of 2017 has arisen out of the judgment and order dated 07.09.2016 passed by the High Court Division in Writ Petition No.7166 of 2015. Civil Review Petition No.181 of 2018 has arisen out of the order dated 21.08.2017 passed by the Appellate Division of the Supreme Court of Bangladesh in Civil Petition for Leave to Appeal (CPLA) No.1790 of 2017. The civil appeal as well as the review petition originate from the impugned judgment and order passed by the High Court Division in Writ Petition No.7166 of 2015.2. The respondents of Civil Appeal No.460 of 2017 and Civil Review Petition No.181 of 2018, as writ petitioners, filed Writ Petition No.7166 of 2015 in the High Court Division stating, *inter alia*, that the writ petitioners were appointed in the "Small Scale Dairy and Poultry Farmers Support Services in 22 Selected Districts Project" (herein after referred to as the Project) in 5 different categories of posts and on different dates under the Ministry of Fisheries and Livestock (shortly, the Ministry) through written and *viva-voce* examinations. Writ Petitioners have been working on different posts for the Project. The writ-petitioners filed the above mentioned Writ Petition for a direction upon the writ respondents for transferring/regularising/absorbing their service in the revenue budget and obtained a rule.

Upon hearing the concerned parties, the Appellate Division of the Supreme Court of Bangladesh has observed the following in relation to absorption and doctrine of legitimate expectation:

1. The legitimate expectation would not override the statutory provision. The doctrine of legitimate expectation cannot be invoked for creation of posts to facilitate absorption in the offices of the regular cadres/non cadres. Creation of permanent posts is a matter for the employer and the same is based on policy decision.
2. While transferring any development project and its manpower to revenue budget the provisions provided in the notifications, government orders and circulars quoted earlier must be followed. However, it is to be remembered that executive power can be exercised only to fill in the gaps and the same cannot and should not supplant the law, but only supplement the law.
3. Before regularization of service of the officers and employees of the development project in the revenue budget the provisions of applicable "Bidhimala" must be complied with. Without exhausting the applicable provisions of the "Bidhimala" as quoted in the judgment, no one is entitled to be regularised in the service of revenue budget since those are statutory provisions.

CASE LAW UPDATE



4. The appointing authority, while regularising the officers and employees in the posts of revenue budget, must comply with the requirements of statutory rules in order to remove future complication. The officers and employees of the development project shall get age relaxation for participation in selection process in any post of revenue budget as per applicable Rules.
5. A mandamus cannot be issued in favour of the employees directing the government and its instrumentalities to make anyone regularized in the permanent posts as of right. Any appointment in the posts described in the schedule of Bangladesh Civil Service Recruitment Rules, 1981, Gazetted Officers (Department of Live Stock Service) Recruitment Rules, 1984 and Non-gazetted Employees (Department of Live Stock Service) Recruitment Rules, 1985 bypassing Public Service Commission should be treated as back door appointment and such appointment should be stopped.
6. To become a member of the service in a substantive capacity, appointment by the President of the Republic shall be preceded by selection by a direct recruitment by the PSC. The Government has to make appointment according to recruitment Rules by open competitive examination through the PSC.
7. Opportunity shall be given to eligible persons by inviting applications through public notification and appointment should be made by regular recruitment through the prescribed agency following legally approved method consistent with the requirements of law.
8. It is not the role of the Courts to encourage or approve appointments made outside the constitutional scheme and statutory provisions. It is not proper for the Courts to direct absorption in permanent employment of those who have been recruited without following due process of selection as envisaged by the constitutional scheme.

In view of the discussion made above and since it is not apparent from the judgment of the High Court Division and other materials available in the record that the procedure provided in the Government notification, circulars or orders and the process of appointment indicated in the "Bidhimalas" 1995 or 2005 have been followed duly for appointing the writ petitioners and that they are no longer in service in view of terms of appointment letters and contracts, Accordingly, the Appellate Division has found that the direction of the High Court Division to absorb/regularise their service giving continuity of the same cannot be approved and set aside the same directions of the High Court Division.

Creating Legally Binding Relationships Using Electronic Means

In modern world many forms of transactions are conducted by various types of electronic communications including email, website or app-based trading. This is facilitated by the explosion of e-commerce, f-commerce and fintech over networks such as the Internet. There are number of ways through which a legal relationship can be created electronically, the most common practice being use of ordinary electronic messaging by various internet medium e.g. email, and the recent introduction of electronic signatures using cryptographic systems that includes the use of data with a message to confirm the integrity and authenticity of the signature for a transaction. The validity of both forms will be analyzed under the purview of Bangladeshi laws.

A contract between parties is governed by the Contract Act, 1872 which defines contract as "*an agreement enforceable by law in a contract*". Hence, two elements are necessary, firstly the existence of an agreement, and secondly that it is enforceable by law. Under the Act, an agreement requires an offer, acceptance and consideration, and the agreement will be enforceable by law if it is not contrary to the provisions of the 1872 Act, such as the object and consideration must not be unlawful, there must not be undue influence, etc. Therefore, all agreements are not contracts, but an agreement will be a contract under the Act, "*if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.*"

In the absence of a statutory formality requirement concerning the form of a particular contract, e.g. must be signed in writing in the presence of witness for transfer of land, lease creation etc., a contract may be created through electronic means such as email and/or Messenger/ WhatsApp message or by means of other electronic communications including mobile text messages. Furthermore, the Information and Communication Technology Act, 2006 ("ICT Act 2006") amended the Evidence Act, 1872 to incorporate "electronically generated documents" in the definition of documents under section 3 that can be produced before the competent Court for inspection as documentary evidence. It is pertinent to mention here that if the parties wish to enter into a contract that is subject to a statutory requirement for writing and signature, important questions arise as to whether the prescribed formalities can be satisfied by the electronic means adopted. Though there should not be any problem from legal perspective but due to practical considerations it may still necessitate contracting in paper form, and due to requirements in other legislations such as the Stamp Act 1899, the Bankers' Book Evidence Act, 1891 etc. Furthermore, the amendment to the Evidence Act 1872 narrowly covers only electronically generated documents instead of electronic records which would have covered various other forms of electronic audio/ video records. Nonetheless, in summary, it is possible to create a binding legal relationship using electronic means as per the prevailing laws of Bangladesh, though for practical and evidentiary reasons it is always advisable to execute a contract in paper document with a handwritten signature.

In the world of electronic contracts, we now see the emergence of electronic/digital signatures as a system to ensure the integrity and authenticity of the electronic contract, mainly because of the high risk of fraud/ cyber crime and propensity enter into electronic contracts without the requisite intention to create the legal relations.

E-signature technology enables the electronic document to be stored securely maintaining its integrity and evidential value. The ICT Act 2006 read along with the Information Technology (Certifying Authority) Rules, 2010 recognizes e-signatures issued by the competent certifying authority. According to the Act, e-signature has been defined as "*any data in electronic form that: a) is affixed to or logically associates with a data message; and b) that the following conditions are met- i) it is uniquely linked to the signatory, ii) it can identify the signatory in relation to the data message; iii) it is created in a safe and secured manner or using means under the sole control of the signatory; and iv) it is attached to the data in such a manner that any alteration made in the data thereafter can be traceable.*"

As per the rules, there are two separate key, i.e. the public key cryptography and the private key attached to the electronic record. The key – e-signature issued by the Certifying Authority are considered legally valid, where upon an application, an electronic signature certificate may be obtained. Hence, as per the prevailing laws of Bangladesh only e-signature fulfilling the conditions mentioned above has been recognized as a valid form of electronic signature to legally create an electronic contract.

A scan copy of digital signature, clicking an accept button online, personal identification number etc. are not valid e-signature as per the ICT Act 2006. Therefore, there is scope to simplify the e-signature regime including allowing simple electronic signature.

In this respect, it can finally be concluded that a contract can be created through electronic means including using electronic signature, provided the conditions mentioned in the ICT Act 2006 and the 2010 Rules are adhered to. The Law Commission of Bangladesh has published a report – *Final Report on the Law of Information Technology* that suggest adopting the UNCITRAL Model Law on Electronic Commerce which provide framework for electronic contract and electronic signatures that are more accessible and acceptable. To facilitate growth in the e-commerce sector and furthering the government's initiatives to digitalize the country's services, it is imperative that immediate initiatives are undertaken to develop the acceptance and accessibility of electronic contract using simple electronic signature/ electronic records and reduce the regulatory hurdles blocking departure from paper trails to paperless society.