



# NEWS LETTER

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# Bangladesh to become a Trillion-Dollar Economy

*- says Boston Consulting Group*

Bangladesh is set to emerge as a trillion-dollar economy in the next decades, thanks to an ambitious business community, growing consumer market and availability of cheap labour.

Boston Consulting Group, a US-based firm, made the observation in its report 'The Trillion-Dollar Prize Local Champions Leading the Way'.

Bangladesh economy stood at \$465 billion in financial year 2021-22. Though the economy faces some near-term volatility, the BCG analysts are confident that Bangladesh's highly resilient economy will continue to demonstrate robust growth in the long-term. They called private companies innovative that have grown rapidly to create structural advantage in the domestic market.

According to the report, the country was widely recognised for its important role in the global supply chain for textile and apparel. It observed that the clothing industries would continue to see growth, with major domestic players expanding their business globally.

The nation's telecom industry is led by three private players – Grameenphone, Robi and Banglalink – that have helped position Bangladesh as the ninth largest mobile market in the world.

The NGO sector has also been a major driver of growth for the economy, with the world's largest NGO BRAC and the pioneer of microfinance Grameen Bank providing a safety net for the bottom of the pyramid.



The report, however, identified six areas where champions can learn from leaders in other markets to pump up their growth and complete the journey from Great to Beyond Great.

The areas include building financial resilience, driving transformational growth by leveraging the balance sheet, forming capital partnerships and driving foreign direct investment, betting on digital data, investing through Corporate Venture Capital and forming coalition and being a part of ecosystems.

The BCG noted that the emerging champions needed support from the government with the right national programmes predominantly focused on reforming the banking sector, building technology infrastructure, digital talent development, ease of doing business and FDI attraction campaigns.

Referring Singapore's Rapid and Immersive Skill Enhancement programme designed to enhance employability for mid-career jobseekers, the BCG also noted that the country should learn lessons from successes in other countries.

# CASE LAW UPDATE

**Civil Engineering Co. Vs. Mahkota Technology SDN BHD and Others.  
2006 (14) BLT (HCD) 103**

## **Facts:**

An ongoing dispute was referred to arbitration since there was an arbitration clause. In Money Suit No. 10 of 2003, which halted proceedings against Defendant No. 1 in Dhaka, the Plaintiff filed a lawsuit for damages. The Judge granted the request made in accordance with Section 10 of the Arbitration Act and ordered a stay of the suit. Other requests for the plaintiff to be rejected were denied by the judge.

## **Issues:**

Whether a suit is maintainable in a civil court with an arbitration clause or not.

## **Judgment:**

The main contract for the construction of the substation, which was signed on July 13, 2000, contains a detailed procedure for arbitrating disputes that may arise during the execution and/or completion of the project in paragraph 20. It is contested that one of the defendants has already served the plaintiff with a notice designating an arbitrator to settle the differences.

Section 7 of the Act was never meant to preclude civil litigation. The contract's execution may be withheld from the parties if they refuse to arbitrate their disputes in accordance with the arbitration agreement. Since such an agreement exists, civil litigation is never ipso facto meant to be prohibited.

Any civil actions brought by one party against another party over an issue covered by this arbitration agreement will not be pursued by the court. The Appellate Division in (2003) 53 DLR (AD) 23 seems to have upheld the ruling in Jute Mills Corporation v. Maico Jute and Bag Corporation and others (2002) 22 BLD (AD) 320.

Given the situation and the state of the law, the learned Joint District Judge made no mistakes in granting the request made in accordance with section 10 of the Act and granting a stay of the suit's further proceedings.

The Bengali translation of the Arbitration Act, 2001's section 7 reflects the section's intent better than the English translation does. It is vital that the English text be examined, updated, and rectified. As a result, the Rules are discharged without incurring any fees. Orders of stay issued on March 18 and March 26 at the time the Rules were issued are recalled and revoked.

# LEGISLATIVE UPDATES

## **The Public Debt Act, 2022 – Replacing the Public Debt Act, 1944**

The Parliament passed the Public Debt Act, 2022 on September 1, 2022. The new Act is replacing the years old the Public Debt Act, 1944. One of the striking provisions of this Act is that it conveys an assurance that the government will, in all cases, repay the money obtained as debt from the general population.

Section 2(26) of the Act defines “State Guarantee” as any guarantee or counter-guarantee given by the Government that is enforceable in accordance with the provisions of the Contract Act, 1872 (Act no. IX of 1872) if any Government autonomous or semi-autonomous or statutory public authority or public non-financial corporation or self-governing body or state-owned enterprise is unable to pay in part or in full the principal and interest or profits and any other liability in respect of loans received from domestic or international sources.

Under the new Act, a maximum of six months of imprisonment, Tk 100,000 in fine, or both will be faced by a saver if they give any false information at the time of buying savings certificates according to section 36. The Act also talks about situations where a minor or a mentally unstable person is the holder of government security through section 19. It says if a minor or a mentally unstable person is the holder of a government security worth less than 1 (one) lakh taka, Bangladesh Bank may transfer the title of said security to the appropriate representative of the said minor or mentally unstable person. The Act also gives immunity to the Government if anyone does not withdraw interest after investing in savings certificates within six years.

## **The New Bangladesh Oil, Gas and Mineral Corporation Act, 2022**

On November 2, 2022, the Parliament passed the Bangladesh Oil, Gas and Mineral Corporation Act, 2022. This new Act replaced the Bangladesh Oil, Gas and Mineral Corporation Ordinance, 1985. As the Ordinance was declared during a military dictator regime, the Court announced it void having no legal effect.

After section 3(1), a new sub-section 3(1A) has been inserted. The new sub-section provides another name for the Bangladesh Oil, Gas and Mineral Corporation, which is PETROBANGLA. The Act also replaces section 6 with a new section 6 that talks about who will be the members of the Board. The Board will have the following Directors: a chairman, an officer not below the rank of a Joint Secretary of the Ministry or Division dealing with energy and mineral resources, an officer not below the rank of a Joint Secretary of the Ministry or Division dealing with finance, an officer not below the rank of a Joint Secretary of the Ministry or Division dealing with planning.

The section also mentions who will appoint the Directors. Moreover, it dictates that the Government cannot appoint more than five other Directors. Section 6(2) said that the chairman will be the Chief Executive Officer of the Corporation.

The last section that has been introduced via the Act is section 10A which talks about the power to hold shares or interest in any company. It provides the right of holding shares or interest in any company formed for the purpose of exploration and exploitation of oil, gas, and mineral resources to the Corporation.

# Critical analysis of Vested Property Return Act 2001



There is a significant historical backdrop to the Vested Property Return Act of 2001, formerly known as enemy property. Under the guise of exercising its authority granted by the 1965 Rules, the Pakistani government arbitrarily seized the property of the Hindu minority as "enemies" or "enemy subjects," it perceived to be affiliated with foes in former East Pakistan, now Bangladesh. On March 26, 1972, the Bangladeshi government put into effect the Bangladesh Vesting of Property and Assets Order, 1972 (Order 29 of 1972), which came into effect following independence.

By virtue of this ordinance, the People's Republic of Bangladesh acquired ownership of all properties located in East Pakistan that had been previously owned by the Pakistani government. The Enemy Property (Continuance of) Emergency Provisions (Repeal) Act, Act XLV of 1974, expressly repealed Ordinance I of 1969 in order to ensure equality of all the citizens. However, the aforesaid Act did not grant the Government any sweeping authority with regard to managing or disposing of such estates. After the 1974 Act was passed, the Ministry of Law issued Circular No. 51 on January 20, 1975, directing the immediate "delisting" of any property that was still listed as enemy property. Later, in 1976 the aforesaid Act was amended and following that section 3 of the 1974 Act was repealed continuing to add more property to the enemy property list and began to sell these assets to interested parties.

According to a Ministry of Land notification issued November 23, 1984, any resolution to include a property after June 21, 1984, shall be void. In 1999, in an effort to give possession of the properties categorized as enemy property from 1969 to the rightful owners, The Vested Property (Return of Possession) Bill 1999 was drafted by the parliamentary standing committee. In order to change a few elements of the 2001 Act the "Vested Property Return (Amendment) Bill, 2001" was introduced before the parliament. The 2001 Act's major objective is to give the aforementioned land back to its rightful owners, who are also citizens of Bangladesh or to their legal heirs.

Section 6(Ga) and (Gha) of The Vested Properties Return Act (2001) has been commenced to uphold the wider public interest. Now the question arises on the implementation of these sections whether it actually protects the public interest or is an escape door to agitate the innocent citizens of Bangladesh. Section 6 of the aforesaid Act prohibits the return of property that the government has substantially disposed of or leased to any group or person. The Act effectively legalized all permanent disposal of those assets over which the government had never obtained any rightful title, despite its seeming pledge to assuage the concerns of individuals whose properties had been unlawfully taken by the government. Besides, the Act draws a distinction between assets that are to be regarded as "returnable properties" and those which are to be referred to as "vested property."

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# Critical analysis of Vested Property Return Act 2001



Any property that was vested after the vesting Order of 1972 cannot be referred to as vested property because neither of the laws governing vested property stated in the aforesaid Act that was introduced after the Order authorized any subsequent vesting of property.

Furthermore, the definition of "returnable property" is any property that the government has designated as vested under the Vested property statutes and that is in its possession or under its authority forthwith before the Act was enacted. Despite the fact that an appropriate legal interpretation of this clause would once more point to the idea that any property listed just after the Order of 1972 cannot be referred to as returnable property, it was not interpreted in such a manner. Whether the government acquired the returnable properties prior to or following the 1972 Order was not considered in the decision.

The list of properties on Schedule "KA" has been considered to be returnable properties, and the properties on Schedule "KHA" have been deemed to not be in the immediate control of the government. A certain simplistic directive from the land ministry has been imposed regarding the release of properties enlisted under schedule "KHA". These guidelines essentially instruct the land offices to reinstate the regular land administration process with regard to the listed lands upon producing legal instruments of title. Contrariwise, for the properties of schedule KA "return" has been made after going through a very specific process.

The 2001 Act's hearing procedure for applications for the return of vested properties has been so cluttered with regulations that it resembles a civil suit for a title declaration. According to section 18 of the Vested Property Return Act, the procedure of decree of return is a drawn-out process and that decree is also appealable to the vested property appellate tribunals. Even after a decision has been made to restore the property to its rightful owner, the document will move to the Deputy Commissioner's office, who will then take the necessary actions to carry out the decision.

The inadequacy of a procedure for releasing property from the list of returnable properties that has been publicized is another significant flaw in this Act. Instead, section 7 states explicitly that any application or civil lawsuit challenging the retention of property on the list of returnable assets is prohibited. As a result, the parties who were aggrieved would have no other remedy than to seek judicial review or constitutional challenge in the circumstances when the list had been prepared improperly. In fact, there have been numerous examples where properties have been inadvertently added to schedule "KA". Even worse, the same properties were occasionally included repeatedly in one schedule or simultaneously in both schedules. In *Aroti Rani Paul v Sudarshan Kumar Paul and others*, "Because the repeal of Ordinance No. 1 of 1969 in 1974 officially put an end to the law of enemy property, no more vested property cases may be brought on the basis of that law going forward". Therefore, the sole glimmer of hope is that a rapid and sincere return of enemy-turned vested property to the rightful owners may have deluded the authority's seemingly good intentions and opened the door for those individuals whose rights would have been severely prejudiced.



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