

## INTELLECTUAL PROPERTY RIGHTS

# To prevent import-export of counterfeited products

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**I**N the context of emerging economic order, the need to introduce a legal system to adopt Intellectual Property Rights (IPR) has been a timely demand. Despite having specific and separate laws for the protection of IPR, Intellectual Property (IP) right holders have suffered from inadequate legislative focus on the process of import-export of counterfeited or false described products.

To supplement the growing significance of IPR protection, on 19 November 2019, the National Board of Revenue (NBR) has enforced the Intellectual Property Enforcement (Import & Export) Rules 2019 with immediate effect. The Customs wing of the NBR is now authorised to confiscate and/or destroy any IPR infringed products, goods or shipments. If any product is manufactured, produced, reproduced, assembled, marketed

i.e. some infringed IP products have already been imported or have been presented for exporting, or with apprehension of such import or export.

Any such objection notice requires to be registered by the Customs authority to initiate the legal process and as a result, registration will not be given unless the IP right holder provides some necessary documents along with the notice. The Customs authority may ask the right holder to provide necessary documents within the next 15 working days of receipt of the notice, which can be extended to a further period of 7 working days. The IP right holder is required to provide - (a) his full name, address, email and telephone number; (b) if he is represented by any person, copy of the "Letter of Authority"; (c) proof of ownership or title i.e. Registration Certificate, Dealership Agreement, Deed of Assignment etc.; (d) date of commencement

authority will require the applicant to execute and furnish sufficient security bond against the customs authority's liability in causing any loss or damages to the importer/exporter/owner/recipient of the products by

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confiscating or staying release of the product in case the notice is not disposed of in favour of the applicant or the alleged IP right holder.

The Customs Commissioner or duly authorised officer may stay the release of any objected product at its own will or on the basis of IP right holder's objection notice, if he is satisfied that IPR has been infringed by any importer/exporter. However, if the authority stays the release by its own will, it will ask the IP right holder to submit necessary documents within the next 10 working days (3 working days for perishable goods), which can further be extended for another 4 working days.

Parties may be allowed to inspect the shipment, collect sample or any necessary information, but subject to the condition of maintaining confidentiality or business secrets. Parties may seek for any necessary information under the Right to Information Act, 2009.

After inspecting all the documents, the Customs authority will determine whether IPR has been infringed. Any such objection notice may be disposed of ordering destruction of the products if it is proved that IPR has been violated. However, no such product will be destroyed if there is any case pending on this subject matter. On the other hand, if the Customs authority finds no IPR infringement, it will provide release certificate within the next 24 hours and in such a case, the applicant may be held to pay for any loss or damages, to the importer/exporter/owner of the goods, incurred due to the disposal of the objection notice.

One significant characteristic of this Intellectual Property Enforcement (Import & Export) Rules 2019 is that it operates territorially with a global effect. This newly introduced IPR protection mechanism has the potential of helping IP right holders in preserving, maintaining and accelerating their cross-border business outputs.

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## FOR YOUR INFORMATION

## SUSTAINING ALL LIFE ON EARTH



**W**ILDLIFE includes all living organisms - plants and animals - that make up the world's biodiversity. These plants and animals are indispensable parts of the ecosystem and are crucial for the sustenance of life on earth. The UN General Assembly, thus, declared 3 March, the day on which Convention on International Trade of Endangered Species (CITES) 1973 was signed, as the World Wildlife Day. Apart from CITES, other international instruments such as the Convention on the Conservation of Migratory Species of Wild Animals 1979, the Biodiversity Convention 1992, the Ramsar Convention 1971 and the World Heritage Convention 1972 also aim at protecting the natural habitat of wild flora and fauna. The protection of biodiversity is also included in the Sustainable Development Goal as SDG 15.

This year's theme for World Wildlife Day is "Sustaining all life on Earth" which encompasses all wild animal and plant species as a component of biodiversity, as well as the livelihoods of people, specially those who live closest to nature. The theme incorporates UN Sustainable Development Goals 1, 12, 14 and 15, and their commitments towards alleviating poverty, ensuring sustainable use of resources, and on conserving life both on land and below water to halt biodiversity loss.

Bangladesh is party to all the aforementioned Conventions and is also obligated to protect the biodiversity and environment under Article 18A of the Constitution. Therefore, in line with its obligations, the Government has enacted the Wildlife (Conservation and Security) Act, 2012. The preamble of the Act recognises the constitutional duty to protect wildlife and natural resources. The Act creates prohibitions on hunting without license, unregistered trade and transfer of wildlife products etc. Under the Act, the Government is empowered to enlist species as vulnerable, endangered and critically endangered. A notable aspect of the Act is that it recognises the traditional and cultural norms of indigenous communities by including protection for any tree or forest which is special religious or cultural value to them. Import and export of endangered species are to be conducted only with a CITES license.

Another Act which is relevant in this regard is the 2017 Biodiversity Act. The Act acknowledges the State's obligation under the Constitution as well as the Convention on Biodiversity. The objects of the Act are protection and sustainable use of biodiversity, and equitable distribution of the benefits derived from biodiversity and traditional knowledge. The Act lays down the rules regarding access to biological resources and traditional knowledge and lawful transfer of the same.

While the 2012 Act contains appreciable provisions, the effectiveness ultimately depends on its implementation. Bangladesh is one of the most vulnerable countries to the changing climate, and the protection of biodiversity and global environment is a matter of paramount importance for the country.

FROM LAW DESK.



or used in any other means by violating the existing IP laws of Bangladesh or abroad, and without the permission of the IP right holder or his/her authorised person, then such product will be treated as an IPR-infringed product. Therefore, an IP right holder can take the benefit of new IPR enforcement regime against counterfeited or false described or even genuine products.

To avail the benefit, the IP right holder must file and register a notice to the concerned Customs House or Customs Station or Customs Port on a prescribed form. The IP right holder may also file such objection notice with specific information

and expiry of IP rights; (e) skeleton of statements supporting the notice for staying release of the products; (f) for specific shipment-details of the shipment; (g) details of the IP right holders original goods along with HS code, sample and clear pictures; (h) name of the concerned Customs House or Customs Station or Customs Port; (i) money receipt of submission of Notice filing fee of Tk. 5000. Upon receipt of the documents, the Commissioner of Customs will notify, within the next 30 working days, the applicant, the decision as to whether the notice is registered or rejected. Once the notice is registered, it will be valid for one year and the Customs

## LAW LETTER

## Legal implications of 'Master Plan'

**A** master plan or a development plan or a town plan can be denoted as a general plan for the future layout of a city showing both the existing and proposed streets or roads, open spaces, public buildings etc. It is a comprehensive document, long-range in its view that is intended to guide development in the township for the next 10 to 20 years.

According to section 5(c) of the Building Construction Act 1952, "master plan" means the master plan prepared and approved under any law for the time being in force for the utilisation of any land anywhere in Bangladesh. And this provision of

the Building Construction Act 1952 is pursued in section 73 of the Town Improvement Act (TI Act) 1953. Section 74 (3) of the TI Act emphasises the implementation of master plan by stating that "all

future developments and construction, both public and private, shall be in conformity with the Master Plan or with the amendment thereof." Section 2(g) of the Playground, Open Space, Park and Natural Water Reservoir Conservation Act, 2000 refers to Master Plan as the master plan drawn up by RAJUK, CDA, KDA, RDA. A Master Plan shall include such maps and such descriptive matter as may be necessary to illustrate the proposals aforesaid with such degree of particularity as may be appropriate, between different parts of the area.

As per section 74(2) of the TI Act, the authority may amend or alter any specific provision of the Master Plan. But the empowering provision of 'amenability' and 'alteration' does not specify the extent of power of alteration by the authority and Government. Can the 'alteration clause' of

the Act be extended to the acts which conflict with the development principle enshrined in the preamble of the TI Act? This question was answered in the judgment of *Rajuk v Mohsinul Islam* (2001) 53 DLR which states,

"Preamble of the Town Improvement Act 1953 provides for development, improvement and expansion of the capital of Republic. Therefore, we are in agreement with the view of High Court Division that although under section 2(h) of the TI Act, RAJUK may alter layout plan, this power must be exercised with the purposes of improvement."

Furthermore, in *Metro Makers and Developers Limited v BELA* (2012), the higher judiciary of the country interpreted the construction work of the developers in a comprehensive connotation and harmonised the implementation of Master plan as "when the [...] Master Plan

came into effect it was incumbent upon the Metro Makers and Developers Limited to obtain permission under the provision of [...] Master Plan if the area is being used in derogation of the purpose earmarked in the Master Plan."

This judicial trend of holding development plan with "public good" spirit is essential for realising the goal of sustainable development with intellectual sagacity. Because, environment-development nexus is historically imprinted as controversial one. The tactful interpretation of development plan can unleash the intricacy of age-old public debate encompassing between environment and development.

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## LAW WATCH

## For effective management of medical waste

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**M**EDICAL wastes have been the reason of thousands of deaths around the world. According to the United Nations Conference on Environment and Development, 5.2 million people including 4 million children die due to medical waste related diseases. Almost 85 percent sharp injuries are caused because of subsequent use and disposal of medical wastes.

Bangladesh Medical Waste Management and Processing Rules 2008 deals with the waste disposal of different medicals and hospitals in our country. There are no other legislation pertaining to management and processing of medical wastes. But with remoter interpretation section 269 of the Penal Code 1860 may be found relatable. The section enumerates, any person who neglectfully or illegally does any act, which may cause the outbreak of contagious disease and harm public health shall be punished with 6 months' imprisonment or fine or both.

In our country, where problems remain unsolvable even with stricter laws, enacting rules is 'a white elephant' to our medical governance. Rule no. 8 of the Medical Waste Management and Processing Rules devises to establish dumping zones in seven divisional areas. However only Dhaka has the only specialised dumping ground for the disposal of medical wastes; that too is very insufficient to meet the demands of increasing number of hospitals in Dhaka. Rule no. 3 prescribes the establishment of 7 divisional authorities in 7 divisions of our country; under this Rule, this was supposed to be done within three months of the enactment of these Rules. Unfortunately, even after 11 years of enactment, neither the divisional authority has been formed nor has anyone looked after the management and disposal of medical wastes.

Rule no. 7 directs the keeping of wastes separate from other general waste during the collection, wrapping, storing and transportation. But almost all the hospitals dispose their wastes by mixing them with



general wastes without sterilising the same. As the protected areas for the disposal of medical wastes are not established, the wastes are disposed of in canals or open dumping zone ultimately harming the environment and food chain. Under Rule no. 5, three types of licenses would be given for - (1) wrapping and storing, (2) collection and transportation, and (3) refining and removal to a third party to deal with disposal mechanism. Unfortunately, these three tasks are to be dealt with by a single stakeholder as third party. Ultimately compact disposal mechanism becomes very tough to be realised. The wastes become blended during any of these procedures. Also, training was supposed to be given for a better disposal structure under Rule no. 6 to the third parties. As the divisional authorities were not formed, training for the disposal staffs seems a castle in the air.

Some NGOs namely Prism Bangladesh Foundation, Nobo Waste Management, Chattogram Seba Songtha and Prodiapon etc. are working as third party by making contracts with the hospitals. But this does not meet the demands of healthy waste disposal mechanism. Even the medical care professionals show reluctance towards maintaining comprehensive waste disposal mechanism. Authority alone cannot make any viable change without cooperation from hospitals and their professionals. If any outbreak of epidemics occurs due to such malpractice, health governance of our country will go under serious turmoil.

Ambiguities regarding the approval and determination of license to the third

party, or the determination of authority itself need to be revisited. Whether the Department of Environment looks after the waste management and implements the Rules or the City Corporation shall be held responsible for not maintaining the proper mechanisms to dispose the medical wastes, shall be determined as early as possible. All these voids shall be filled with concrete directions. Our country may strictly adopt 'Duty of Care' principle whereby the medical professionals will be assessing risks of disposing medical waste in a particular manner. Further, the medical waste (hazardous waste) shall be separated from the normal waste (non-hazardous waste) by the medical professionals. Then, it may set charges depending on the weight and probable harm may be caused by the wastes following the 'Polluter Pays' principle of international environmental law. The principle prescribes "he who produces hazardous substances, shall carry the responsibility of disposing to save environment from an imminent harm."

Moreover, a single organisation may not be licensed to dispose, transport, collect or remove the medical wastes. Three or four different institutions may be vested and licensed with different responsibilities. Additionally, all hospitals shall collect two certificates, (1) Location certificate, and (2) Environment Clearance Certificate after conclusive Environment Impact Assessment. The assessment must show whether the wastes will be disposed of following the mechanism devised by Medical Waste Management and Processing Rules 2008. Most significantly, the divisional authorities shall be formed and protected disposal zones shall be established within no time to tackle the unseen but foreseeable hazard. Lastly, the Department of Environment, City Corporation and Bangladesh Medical & Dental Council shall work hand in hand for a healthy medical waste disposal system.

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