

WHAT THE SITUATION NEEDS

Insights on stimulus packages from a legal perspective

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AS COVID-19 continues to roll out and thwart the fates and fortunes of people in the doldrums, the government of Bangladesh is poised to take several initiatives to help combat the health and economic crisis that is sweeping across the nation. In response to the dire situation, it announced Tk 72,750 crores bailout package, about 2.52 percent of the national GDP, to help the economy rebound from a probable downturn. Compared to Italy and France, two of the worst victims of the outbreak, who declared schemes worth 2.3 percent and 1.8 percent of their respective GDPs, the stimulus package declared in Bangladesh seems generous. Yet there are uncertainties on how this outbreak will unfold in days to come and whether the bailout package will be adequate to address the upcoming challenges businesses are likely to face.

The government incentives are fundamentally symmetric in countries worldwide in that a large portion of the benefit is dedicated to cover up the debt liabilities of businesses due to lack of revenue streams and hardship in coping up with liquidity crunch as a result of the pandemic. On April 2, 2020 the Bangladesh Bank issued BRPD circular number 7 constituting a fund of Tk 5,000 crores to facilitate payment of wages of workers in export oriented industries. The circular enumerates the requirements of eligibility to avail the fund in the form of a non-interest bearing loan to the portfolio of the business entity through commercial scheduled banks.

While loan without interests is like a rose without thorns, there is still a scope of 2 percent service charge to be imposed by banks to carry out the administrative expenses in the process of disbursement of the facility. The banks must verify the eligibility of the applicant and disburse the amount directly into the bank account (including MFS account) of the workers. Although the availability of incentive is limited only to industries having an export portfolio of 80 percent of its net production and is limited for payment of wages to the workers only, and that too for a period of maximum three months, it is nevertheless a relief, albeit temporary, for businesses having shortage of cash inflows during this global crisis. The facility has been made available for active industry, which refers to those who have disbursed the wages of workers till the month of February 2020.

Notably, in order to be eligible for the facility, there is no requirement in the circular for the workers to actually work during the period of April to June, and in all likelihood, the scheme may have been designed to retain jobs of workers who have been asked to stop working, but who are being kept on the payroll. It needs to be pointed out that although the beneficiary of the loan are the workers, it is their employer who is having to repay the loan. Given the history of workers protesting for lack of pay in ordinary situations against their work, it remains to be seen whether business owners would like to assume the liability of loan while their workers indeed have not worked to generate any revenue.

This raises the question whether the businesses are at liberty to avail the loan. What if the business opts out in availing the benefit of scheme and instead lay off its workers? The circular does not force a loan on the business owners, rather it grants a privilege for certain industries to avail a facility to be repaid at a later date on certain conditions. The businesses will have a grace period of six months and will commence repayment from January, 2021 and complete repayment within a period of two years in eighteen instalments. It seems that the scheme is designed in a way where it is contemplated that the situation will turn around in months to come, as the repayment obligation will commence early next year with a potential 2 percent service charge on top, and the factories will resume work and repay its liabilities eventually.

However, considering the uncertainty over the situation turning around any time soon and the overall availability of workforce in Bangladesh in ordinary times, the likelihood

of businesses not availing the loan cannot be undermined. As a result, the possibility of workers not getting paid during this period cannot be ousted at all. But the industries are now at the crossroad of uncertainties, they must either embrace the unknown and avail the loan, or take a disgraced path of laying off its workers. Regardless of the sweet coating of the loan, credit must be given to the lobbying power of BGMEA that such a package was offered exclusively for the export oriented industries.

Under the circular, the benefit is directed to the workers (excluding “officers”) to be paid in their own accounts. On 8 April, 2020, the Bangladesh Bank issued another circular (BRPD circular letter number 14) stating that payment of wages to officers working in the factory will remain outside the scope of this facility without providing any definition of “officers” in the circular itself. It is to be noted that no distinction has been drawn in the labour laws of Bangladesh between officer and non-officer as long as they fall within the definition of “worker”, which refers to any person employed in an establishment or industry without administrative, supervisory or managerial power.

a guarantee of 80 percent on each loan (subject to a per-lender cap on claims) by the government to give lenders further confidence in continuing to provide finance to businesses. In addition, for the SMEs, the government in the UK will also make a Business Interruption Payment to cover the first 12 months of interest payment and any lender-leveled fees, so businesses will benefit from no upfront costs and lower initial repayments.

In India, on the other hand, a moratorium of three months on payment of instalments for all term loans was granted. In respect of working capital facilities sanctioned in the form of cash credit/overdraft, lending institutions are permitted to defer the recovery of interest applied in respect of all such facilities during the period from March 1, 2020 up to May 31, 2020. The rescheduling of payments, including interest, will not qualify as a default for the purposes of supervisory reporting and reporting to Credit Information Companies (CICs) by the lending institutions.

While the government of Bangladesh in the most recent stimulus package incentivised payment of interests in respect of newly

for businesses in this dire situation and for that matter the SRO No 229-Ain/Income Tax/2011 (July 4, 2011) can consider raising the threshold for CSR expenses and include expenditure to address the pandemic in Bangladesh within the scope of permitted activities.

However, the history of delinquent borrowers in Bangladesh are not unknown. The country has already witnessed challenges from non-performing loans and with further loans being made available, the schedule banks must remain careful to whom they are disbursing the fund. While the circular does not relate the eligibility criteria to the credit portfolio of the applicant, the banks need to be careful in creating its exposure to delinquent performers. As the loan is collateral free and without any sovereign guarantee, the ultimate risk would lie on the commercial banks. While making exposure, the banks need to make a judgment call in deciding whether to extend loan to a classified borrower who might take a chance in the situation despite repeated reminders from the government not to take advantage of opportunities amidst crisis.

For the purpose of repayment, businesses

form of tax break and furloughing. Under the current labour law, furloughing is not contemplated. Government should also consider making provision in this regard so that in future the employer is not thrust into a disadvantaged position during a public holiday declared in special situation like this and workers should also not feel that they got paid holiday. Additional arrangement could be put in place to mitigate the loss of wages of workers and a proper balance needs to be struck between the rights of workers and employers so that none gets deprived of their respective rights to do business and to work.

More recently, the government announced further stimulus package covering Tk 30,000 crore to be provided to affected industries and service sector organisations as working capital through banks as low-interest loans where the government and the affected industry will equally split the payment of interest rate. The second package pertaining to small and medium enterprises (SMEs), including cottage industries, would get Tk 20,000 crore as working capital. The interest rate of this lending facility will be 9 percent whereas the concerned industries and business organisations will pay 4 percent interest of that loan; the government will provide the remaining 5 percent as subsidy. The third package relates to enhancing Bangladesh Bank’s Export Development Fund (EDF) to add up Tk 12,750 crore (USD 1.5 billion) to the EDF while its interest rate would simultaneously be brought down to 2 percent, which has now been done through FE Circular No 18 dated 07/04/2020.

Finally, the central bank would also introduce a new credit facility of Tk 5,000 crore as “pre-shipment credit refinance scheme” and its interest would be 7 percent. While implementing these generous packages, the government should find a workable solution to curve out a suitable framework for businesses. What would be the policy guideline for implementing these facilities aimed at different sectors will play a vital role in its success.

It may be pointed out in this regard that the only package declared so far having some set guidelines is apparently aimed at garments and allied export sector, whereas far larger amount of commitment has been made in the local industries and SMEs for which no specific guidelines have been made available yet. Until then, it appears that the stimulus package worth Tk 30,000 crores for industry and service sector is open for garments sector as well, and it remains to be seen how this distribution of incentive plays out for disadvantaged sectors in days to come.

Considering the leverage that relatively large industries, in particular the RMG manufacturers, has on the national economy and the policy decisions of the government, the likelihood of local industries and medium enterprises lagging behind in the race cannot be ousted altogether. If a decision to create exposure is left with the commercial banks, the larger undertakings are likely to get preference, much to the dismay of small entrepreneurs. The government again needs to take on the driving seat in formulating some definitive guidelines to ensure a fair distribution of incentives among all the players of the business ecosystem.

The world has embraced a unique situation and economists fear a depression in days to come if the situation persists. Digitalisation has been the key to overcoming many challenges as people continues to work from home. While isolation and social distancing is becoming the norm to address the situation, people have rather come closer in the virtual world. The crisis has proved once again that people need a digital landscape, a “Digital Bangladesh”. A lot of activities in business and executive functions are now taking place online, not just in Bangladesh—all over the world. In judicial system, neighbouring India has taken a great leap very recently amid the outbreak by operationalising an “online only” format of functioning. It may be explored whether a similar initiative can be taken in Bangladesh to address the change in doing business.

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A ferry crammed with mostly ready-made garment workers leaving Dhaka. Hundreds of workers walked for hours to reach the city after the authorities had decided to open the factories, but they had to travel back to their villages as the owners changed their decision following widespread criticism.

PHOTO: COLLECTED

The threshold for “workers” as developed in the jurisprudence of labour law is rather high and given the fact that the courts have been historically quite generous in granting the benefit of labour law to almost every employee except to the officer having the power of hiring and firing. Therefore, it may well be the case that a handful of “officers” will fall under the definition of “worker” pursuant to the labour laws but may be treated as “officers” under the circular. This runs the risk of these employees being laid off or losing wages due to not having been covered under the scheme of incentive.

It is indubitable that the package brings forth benefits in times of crisis but the underlying question remains who is getting benefited. The BRPD Circular No 7 appears to be a blend of facility intended to retain jobs while supporting the business. In the United Kingdom, there is two separate schemes for these two purposes—one is the Coronavirus Job Retention Scheme and the other is the Coronavirus Business Interruption Loan Scheme. The former is in the form of grant disbursed to the furloughed workers and the latter in the form of a loan through commercial banks with government support. The loan is paid out to the businesses with

availed loans within the scheme, there remains a possibility of corporations not being able to repay their existing liabilities obtained as loan. Will these businesses be classified in the usual course? It is high time the government may revisit the classification process to address this unique economic situation due to the outbreak. From a tax perspective, it may be noted that the United Kingdom and India have put in place few schemes aimed at giving tax incentives and VAT deferral support to help businesses at this moment of crisis. Although no tax incentive has been announced as of now, it may be noted that the Bangladesh Bank has exempted consumers from payment of credit card interests during the period of crisis.


In this regard, it may be noted that the situation requires everyone to come forward, not just the government and hence, to encourage such steps, the Indian Ministry of Corporate Affairs announced that COVID-19 spending would now be covered under the (general) Corporate Social Responsibility (CSR) activities pertaining to the promotion of health, preventative healthcare and sanitation and disaster relief. Similarly, in Bangladesh initiatives can be taken to render corporate social responsibilities lucrative

will face a challenge larger than ever, as they must find a way to earn so much so that it covers up the costs of instalments and it is likely that the workers may be asked to put in longer hours to make up for the disbursements. This raises the question whether the labour law needs to be revisited to address this situation as well as the individual employment contracts of the workers to accommodate this change in hours of work.

At present, total working hours of a worker shall not exceed 60 (sixty) hours in a week in a factory. The proviso of section 102 of the Bangladesh Labour Act 2006 provides that the government may, in the cases of some particular industries, under conditions imposed by order in writing, relax the provisions of this section or exempt from the provisions of this section at a time for a period of not exceeding 6 (six) months, if it is satisfied that in the public interest or in the interest of economic development such relaxation or exemption is necessary.

If the employers are allured to keep their employee during this pandemic by paying salary from their own pocket by borrowing from the bank at a lower interest rate, additional sweetener will be needed in the

ON THIS DAY
IN HISTORY



EXPLOSION ON THE
DEEPWATER HORIZON OIL RIG

April 20, 2010

On this day in 2010, an explosion occurred on the Deepwater Horizon oil rig—located in the Gulf of Mexico, some 66 km off the coast of Louisiana—leading to the largest oil spill in history.

CROSSWORD BY THOMAS JOSEPH

ACROSS

1 Periodicals, for short

5 Judge

9 Painter Picasso

10 Winfrey of TV

12 French farewell

13 Florida city

14 Lebanon trees

16 Sick

17 Genesis garden

18 Mars, for one

21 Scepter

22 Comes up

23 Fruit trees

24 For each

26 Mountain pass

29 Disease-bearing fly

30 Mediocre

31 Phone download

32 Cashew family trees

34 Small, to Simone

37 Carnival attractions

38 Slyly sarcastic

39 Without others

40 Look over

41 Easter lead-in

DOWN

1 Coped

2 Tolerated

3 Do some field work

4 Tart

5 Period

6 Clean Water Act org.

7 Royal fur

8 Sugar trees

9 Track horse

11 Sentry's command

15 Evergreen trees

19 Citrus fruit

20 Braying beast

22 Pub brews

23 Peach center

24 Quaking trees

25 Digestion-related

26 Incite to action

27 Climb

28 Sheriff's group

29 Lights-out tune

30 Mona Lisa feature

33 River of Russia

35 Writer Tarbell

36 Toe count


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TUESDAY'S ANSWERS

BOYSS MONAIS
AMASS ENNUIS
RENEW SEINE
ELKETAMEG
SEESAWHARE
TEETOTALS
TEPITHY
TEATOWELS
BOLLNASALS
APPPERRAP
WHALETETAS
LASERSIDES
STOOP DORM

BEETLE BAILEY BY MORT WALKER



BABY BLUES BY KIRKMAN & SCOTT

