

## LAW REVIEW

# Evaluating the Bangladesh Tour Operators and Tour Guides Act

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The tourism sector of Bangladesh is growing but is yet to reach its full potential. To improve the scenario, the Parliament of Bangladesh has enacted the Bangladesh Tour Operators and Tour Guides (Registration and Operation) Act, 2021. This Act aims to regulate the functions of tour operators and tour guides of Bangladesh. It aspires to ensure quality in the services of the tour operators to make the tourism sector of the country run smoothly and attract foreign direct investment in the sector as well.

The definition of 'tour operator' in the law is very wide and it is difficult to understand whether the hotels and resorts will now require a license of 'tour operator'. The definition includes those individuals who offer accommodation and food services to the tourists. Currently these hotels and restaurants take licenses under the Bangladesh Hotel and Restaurant Act 2014. Requiring additional regulatory approval will only scare the foreign and domestic investors from the sector away.

The Registering Authority under section 3 plays a very important role. But it is strange that the legislature did not table any guidelines on who can be chairman or member of such registering authority.

under section 6 on who are qualified to become tour operators. The limitations include non-citizens, minors, people of unsound mind, insolvent and people who have been penalised under the criminal law of Bangladesh without the passage of 2 years since the penalisation. However, the Act has kept provisions for non-citizens to become tour operators only after obtaining permission from the government as mentioned in section 4(2). But the Act has not provided enough information or instructions to make the process easier for the non-citizens.

To obtain a registration certificate, an application is to be made by completing the form and paying the prescribed fees under section 5 of the Act. The Ministry of Civil Aviation and Tourism is yet to adopt the Rules under the Act prescribing the form and the fee. Alongside, some necessary documents have to be submitted after attestation. These include the trade license of the company, Tax Identification Number, in case of companies, attested copies of Articles of Association, Memorandum of Association and a Certificate of Incorporation. Moreover, it is also required to submit an affidavit with the obligation not to commit fraud or extort additional money from any tourist. Thus, the Act takes necessary precautions to ensure such tour

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approach towards regulating the tour operators and providing registration certificates to such operators will help control the unlawful activities of tour operators and secure the tourism sector of the country. The Act also provides for pausing or cancelling the certificate as prescribed under section 10 of this Act. The grounds are supplying false information, violating any conditions of this Act, acting outside the prescribed conducts of tour operators under this Act, failure to renew the registration certificate within prescribed time and if the person with the registration certificate gets penalised under criminal law. It ensures that no tourists will be harassed, and every tourist will be treated in accordance with the services which have been claimed to be offered by the tour operator.

Since the Act is still new, there are a lot of unanswered questions regarding it. Even though the Act mentioned the formation of a registration authority under section 3, there is lack of information regarding the functions or the number of members of this authority. There is also no online portal which provides information on the registration of tour operators and no option for making an application online. Since the Act has imposed a time limitation on registration of all the unregistered tour operators within 6 months, it is a concerning issue on how fast the Government will be able to act and make the process of obtaining the registration certificate easy and accessible for the tour operators.

Even so, guidelines and rules regarding the functioning of tour operators and tour guides were imperative for the tourism sector of Bangladesh. This Act is a step towards the positive direction and has immense potential to ensure the overall safety and security of tourists as well as protection for the registered tour operators.

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## LAW OPINION

## Do we have the provision of Supreme Judicial Council in the existing Constitution?



ASHUTOSH SARKAR

About four years have passed since the Appellate Division of the Supreme Court decided in favour of restoring the Supreme Judicial Council (SJC) as laid out in Article 96 of the Constitution through the verdict of the 16th Amendment case. However, the government is yet to comply with the verdict by restoring the provision of the SJC in the Constitution, as it has filed a petition with the apex court on 24 December 2017 seeking a review of the verdict. The review petition is yet to be settled as its hearing and disposal has been pending with the Appellate Division. Therefore, the provision of the SJC is absent from the Constitution now.

The issue has once again come to light after 42 distinguished citizens have collectively submitted a letter to the President urging him to constitute a SJC to investigate the allegations of "serious financial corruption and gross election-related misconduct" against the Election Commission (EC). In a letter to President Md Abdul Hamid on 14 December 2020, they noted the SJC should be formed under Article 96 of the Constitution. The eminent citizens wrote to the President for the second time on 17 January 2021 reiterating the demand for constituting SJC to probe allegations against the EC.

Earlier Dr Shahdeen Malik, one of the 42 citizens, told *The Daily Star* that the SJC is in operation following the apex court's verdict on the 16th amendment case although the provision of SJC has not been restored in the Constitution by the government. "No stay order is passed by the [apex court] following any review petition of the state", he added. On 16 November 2021, Law Minister Advocate Anisul Huq told the Parliament that hearing of the review petition against the verdict on 16th amendment of the Constitution will start very soon. He said this while speaking on the issue of a proposal to send the Leader and Deputy Leader of the Opposition (Remuneration and Privileges) Bill, 2021 over to the scrutiny committee.

He said the case is now pending with the Appellate Division as the government sought the review on the ground of "error apparent on the face of the record". "There is enough merit for reviewing this case," he said. The Minister said the government has already requested the Appellate Division to review the case. "Appellate Division informed us they will hear the case very soon," he said. Earlier, Fisheries and Livestock Minister Advocate SM Rezaul Karim told *The Daily Star* that there is no provision of SJC in the existing Constitution of the Republic. Therefore, the President can do nothing by going beyond the Constitution, he observed.

Attorney General AM Amin Uddin told *The Daily Star* that he cannot say whether the SJC is in operation as the review petition against the Appellate Division verdict on this issue is still pending.

In the letter submitted to the Hon'ble President on 14 December last year, the citizens mentioned that members of the EC, under Chief Election Commissioner KM Nurul Huda's leadership, have committed misconduct and irregularities, including spending Tk 2 crore for delivering speeches as "special speakers" and Tk 8.08 crore in recruiting staffers for the Commission. Three Commissioners have also allegedly been using cars in violation of relevant rules. The letter also noted that the EC has committed gross misconduct and irregularities in buying and using the electronic voting machines, and in holding the 11th parliamentary election, and also elections for Dhaka North and South city corporations, and Khulna, Gazipur, Sylhet, Barishal and Rajshahi city corporations.

In September 2014, the parliament passed the 16th amendment to the Constitution, re-empowering itself to remove Supreme Court judges and other constitutional post holders for incapacity or misconduct. A few days later, Supreme Court lawyer Manzill Murshid moved a writ petition before the High Court, seeking repeal of the amendment. After hearing both sides, the High Court Division declared the 16th constitutional amendment null and void in May 2016.

The government then challenged the High Court Division's verdict, but the Appellate Division rejected the appeal on 3 July 2017 and thus upheld scrapping of the amendment. In the verdict, the apex court restored the SJC. On 24 December 2017, the government filed the review petition against the said verdict. Since then, the petition has been pending with the apex court.

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Usually in other regulatory body related laws, we can find clear instructions prescribing the requisite qualifications of chairman and/or members of such regulatory bodies. A substantive provision like the qualification for chairmanship/membership in a regulatory body should have been prescribed in the mother legislation.

The Act has imposed a ban on unlicensed tour operators and tour guides under section 4. It has also provided instructions for the tour operators to apply for a license by supplying the necessary documents to the registration authority. The existing unregistered tour operators and tour guides are required to be registered within 6 months of the enactment of the Act. So, it is important for the aspiring tour operators and tour guides to know how to get a registration certificate in the correct way to conduct their functions legally.

The Act has also provided restrictions

operator licenses are not given to wrong persons.

If the application is accepted after proper scrutiny, the applicant will obtain a registration certificate within 15 working days. If not, the applicant will receive a written explanation for the rejection and will get a chance to reapply to the registration authority for reevaluation following the instructions given in section 7. The registration certificate is not for an indefinite period. The certificate is valid for 3 years since its issuance. For the renewal of the certificate, an application has to be made 3 months prior to the termination date. However, the Act has not provided any guidelines for monitoring and evaluating the tour operators by the tourists and the relevant stakeholders. Without relying on the review of the stakeholders, the service of the tour operators and tour guides cannot be raised to a global standard.

The Act has a very straightforward

## LAW WATCH

## Claim for total loss under marine insurance policy

SHWEETA MISHRA AND ZAHIRUL BASHAR

International trade largely depends upon the shipping industry. Around ninety percent of traded goods are transported around the world through sea. However, a sea voyage is not always smooth or safe. There are many cases where the vessels do not reach their destination. Despite taking safety measures, accidents happen due to weather conditions, collisions between ships, groundings, allisions, fire, piracy, breakdown of equipment and other navigational issues. The losses suffered by the ships are mainly categorised as partial and total loss.

In marine insurance a total loss may either be an actual total loss or a constructive total loss. As Özlem Gürses comments in *Marine Insurance Law* (2015), "both are equally total losses, that is, the assured is entitled to claim for a loss of the whole subject matter insured".

As per Marine Insurance Act 1906 of the UK, the actual total loss means the vessel/ship is destroyed, damaged, or ceases to exist. Constructive total loss means when a vessel cannot be recovered from the loss due to unavoidable circumstances. In constructive total loss, the cost of recovery of the insured subject-matter is more expensive than the value of the actual subject-matter. That is why such losses are treated as total losses. The ship-owners take precautions to cover themselves against such huge losses through contracts of insurance. A contract of marine insurance is a contract where the insurer agrees to take the risks arising out of marine adventure and indemnify the assured against the contracted risks. The risks are pre-

contracted and pre-conditioned. Both parties mutually agree upon the risks.

In marine insurance ship-owners, charterers and cargo owners have different kinds of insurance requirements. The marine insurance usually covers Hull (ship's body) and Machinery (H&M), freight, ship's liabilities, and cargo. Each type of subject-matter has its own insurance coverage.

In cargo insurance, more than one party is involved. The cargo of the vessel belongs to a third party. In a common situation, the owner of the cargo arranges the insurance cover for the cargo to protect them against any kind of danger. Though there are many types of marine insurances, practically a good many insurers and insurance policies can be involved in one incident.

Insurance policy comes into play when an incident occurs. To claim under the policy both assured and the insurer have their obligations. Depending upon how the parties perform their duties, the parties will be liable or entitled to the insurance claim.

As an example, in case where total loss is claimed by the cargo owner due to sinking of the vessel, the obligation of the assured to claim under the insurance policy is to submit original insurance policy, original bills of lading, shipping documents, notice of abandonment, note of protest of masters, copy of I/C (letter of credit), vessel's classification record, survey report, casualty report, and media report.

The Marine Insurance Act of 1906 mentions the requirement of the notice of abandonment to the insurer. This notice serves as the



declaration of the fact that the insured has abandoned all the interest left in the insured vessel concerning the claim of total loss. If the notice is not served, the claim will be treated as partial loss, instead of total loss.

Now the question arises as to how the notice of abandonment be issued, in cases where the ship sinks at High Sea along with the crew or in cases where the ship sinks, and the crew members of the ship evacuate the ship in emergency. The realistic approach is if the whole ship is destroyed and the crew members lose their lives in the incident or they leave the

vessel in emergency, there would be no one left to issue such notice.

The master has an important position of responsibility along with the carrier and the ship-owner. They are responsible to oversee and to ensure seaworthiness of the vessel. If not, it is a breach under the International Safety Management (ISM) Code. Additionally, the ship-owner or the carrier needs to comply with the International Convention for the Safety of Life at Sea (SOLAS) convention and must obtain safety management certificates (SMC) and documents of compliance (DOC).

In absence of these documents, the insurance cover may be ceased.

It is expected in marine insurance, that the ship-owners must always act as if there were no insurance, and the ship-owners must take every possible action to ensure the safety of the vessel.

In Bangladesh, there is no specific law that addresses marine insurance. Under Insurance Act 2010, all kinds of insurance, including marine insurance, are covered. In the end, in case of total loss when the ship is destroyed, the assured can take certain measures to mitigate the loss and to claim insurance coverage. If the assured takes precautions as a prudent uninsured person to safeguard the insurable object i.e., the ship or the cargo, the insurer will reimburse the insurance claim to the assured under appropriate circumstances.

In case of claim of total loss due to sinking of ship along with entire cargo on board, the cargo owners may get relief through the insurance mechanism if they act promptly and prudently to safeguard the vessel as they would have acted in absence of any insurance contract and as per the terms of their contract with the insurer to mitigate further losses specifically in terms of suing the concerned party to recover their loss and fulfilling the obligation mentioned under the insurance policy. If the assured timely fulfilled all their obligations under the insurance policy, they are entitled to receive the money as promised under the insurance policy.

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