



ACCORD CHAMBERS

INSIGHTS

LEGAL & REGULATORY UPDATES, ANALYSIS AND COMMENTARY

Bangladesh Labour Rules: 2022 Amendments

Key concerns and implications for businesses

While Bangladesh continues to grow at an astounding rate, having demonstrated resilience amid the global impacts of the COVID-19 pandemic and extraterritorial conflicts, the continued stability of its economy, availability of much-needed forex reserves, and the nation's energy security critically rests on the continued influx of export proceeds and foreign direct investments.

The demand to safeguard the welfare of the workforce at large on the one hand and the need to ensuring a well-structured legal and regulatory framework that nourishes and incentivises foreign investments on the other hand has never been so acute as it is today. In a bid to achieve clarity to existing legal provisions and make them suitable for all stakeholders, the Ministry of Labour and Employment (“**MOLE**”) of the Government of Bangladesh, in the exercise of its powers under the Bangladesh Labour Act, 2006, as amended (“**BLA 2006**”), has recently amended the Bangladesh Labour Rules, 2015 (“**BLR 2015**”) through the promulgation of its S.R.O. 284-Ain/2022, dated 25 August 2022 (“**2022 Amendments**”), with immediate effect.

This issue of our legal insights aims to offer practitioners' perspectives on the key concerns and significant implications the 2022 Amendments could give rise to for the business community at large. In doing so, it provides a critical evaluation as to how a new array of uncertainties and disincentives may well have loomed for current and prospective investors to Bangladesh.

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A bird's eye view of the 2022 Amendments

A few positive changes to the BLR 2015 by its 2022 Amendments relate to rules regarding the protection of women at the workplace, the introduction of miscarriage leave, as well as mandatory safety requirements to be adopted in factories. However, provisions that appear to have imposed a mandatory yearly increment in wages, a prescribed salary structure, and requirements that the wages of a worker supplied by a contracting agency cannot be less than the wages of permanent workers or employees of a similar rank as well as the need for organisations to formulate organogram and service rules are only to name a few changes that can have a colossal financial impact for businesses let alone give rise to new avenues of widespread confusions or practical challenges.

Mandatory yearly increment

The BLR 2015, as amended, now imposes a requirement for the mandatory yearly increment of wages that cannot be less than 5% of the basic wagesⁱ. Interestingly, the 2022 Amendment makes no reference to any proviso or exception that an employer may avail to impose preconditions, such as meeting KPIs or having a minimum profitability threshold, for effecting wages increment. In the premises, corporations will have to face the pressure of increasing employee costs irrespective of practicalities, notwithstanding the overall slowdown of growth during these times of global economic crisis.

Moreover, the primary legislation BLA 2006, as amended, does not contain any statutory provision stipulating such mandatory yearly increments of wages. This gives rise to a question as to whether such an act in the absence of an express statutory provision sanctioning the same thereby lacks lawful authority.

Basic wages cannot be less than fifty percent (50%) of total wages

Under the newly amended BLR 2015, the basic wages of workers cannot be less than 50% of the total wages in cases where the Government has not fixed a separate minimum wage.ⁱⁱ This amendment alone can tremble the entire compensation structure of the entire workforce of a company in a number of ways.

Many businesses have an existing pay structure under which the sum total of other benefits and allowances surpasses the basic wages payable. That can no longer be the case under the new rules since basic wages payable to workers shall be a minimum of fifty percent (50%) of the total wages. Companies with different compensation structures may now be required to change the status quo and implement this new requirement.

This may turn out to be less straightforward than it appears since entities that are currently giving higher benefits and allowances in comparison to basic wages may now be compelled to increase the basic wages rather than simply altering and adjusting the heads. This is because a reduction of payments under such benefits and allowances heads so as to achieve the 50:50 ratio may be susceptible to challenges on the part of the workers.

Mandatory equal pay for outsourced workers

One of the applauded amendments to the Bangladesh Labour Act, 2006, during its 2013 amendmentⁱⁱⁱ, was the statutory recognition of contract hiring in that contracting agencies are required to obtain mandatory registration, and workers supplied by a contracting agency are to be treated as the workers of the contractor concerned^{iv}.

The 2022 Amendment of BLR 2015 now provides that the wages of a worker supplied by a contracting agency will not be less than the wages of a permanent worker or employee of a similar rank^v, and the basic salary of the same cannot be less than fifty percent (50%) of the determined salary. This attracts both financial impacts as well as practical challenges with its implementation.

To date, availing services that do not fall within a corporation's core business, for example, hiring drivers, security guards, cleaners etc. through specialised third-party contractors, would enable entrusting such third parties with professional services for competitive costs. If employees of such contracting agencies are now mandatorily required to be paid wages equivalent to that of permanent workers or employees of a similar rank within the corporation, it will disrupt the sustainability of the entire contracting agency business model to the extent that costs of providing workers to different organisations in different posts would now be higher thus increasing costs burden before contracting agencies can make a margin for themselves.

Moreover, it gives rise to a multitude of additional perplexities since it is unclear how the contracting agency and the engaging corporation would know the precise wages of each other's employees. In any event, such information is almost always confidential and highly sensitive.

Not only that, what is "similar rank" and what happens if an entity only engages contracting agencies for services that fall outside its core business remain entirely unaddressed. Most importantly, it is impracticable for a contracting agency that, on contract, supplies workers to different organizations at the same time to ensure that its wages in different posts match that of its various clients, who inevitably have different pay structures, all at the same time. All these may only direct to a conclusion that the 2022 Amendment may have only added to the confusion on various fronts.

Classification of workers

So far as it relates to the classification of workers under the BLA 2006^{vi}, an individual worker, after completion of his or her probationary period or extended period of three months, shall be deemed to be permanent. As such, the permanence of employment of each individual would be conditional upon the satisfactory completion of his or her probationary period, which for functions of clerical nature is six (6) months and for other workers, an initial period of three (3) months subject to a further extension of three (3) months for further ascertaining his or her quality, thereby not exceeding a total of one hundred and eighty (180) days.

However, a new insertion to the BLR 2015^{vii} by the 2022 Amendment provides that to determine the classification of workers, any work will be considered as the primary work or permanent work which has been continuing in the establishment without interruption for a period of one hundred and eighty (180) days. This gives rise to confusion afresh as to whether the classification of an individual worker is dependent on how many days he or she has worked or whether the very work or role for which such a person is assigned has been continuing exceeds a period of one hundred and eighty (180) days.

This amendment will be critical for businesses at large due to litigation exposure for businesses that could be potentially brought by outsourced workers who have worked for more than one hundred and eighty (180) days. There may now be attempts on the part of outsourced workers to rely upon these amended provisions and argue that employers can no longer engage outsourced workers in a designation or post which is included in the permanent manpower structure or organogram of the employer company^{viii} or that surpasses one hundred and eighty (180) days of work.

Timeline for concluding disciplinary inquiry proceedings

BLA 2006^{ix} and BLR 2015^x also provide for the disciplinary inquiry procedure to be completed within sixty (60) days. It did not, however, explicitly mention the time from which these sixty (60) days period would start resulting in inconsistent judicial approaches and varying interpretations. The 2022 Amendment has sought to offer clarity and address this confusion and provides that the date on which the show-cause notice was issued till the day on which the complaint has been disposed of shall be considered for the purpose of counting these sixty (60) days.

However, in the course of doing so, MOLE may well have failed to consider that if the sixty (60) days period starts to run from the issuance of the show-cause notice, then the actual time which the disciplinary inquiry committee, in fact, gets is quite less. This is because the accused employee is mandatorily required to be given seven (7) days' time to respond to the show-cause notice.

In case of an unsatisfactory response, a disciplinary inquiry committee is formed that also requires a nomination from the accused employee as well as the employer. If the accused employee fails to nominate his or her representative within the given time frame, then the CBA (collective bargaining agent) or the participatory committee shall be resorted to. Once formed, the inquiry committee needs to thoroughly investigate each of the allegations and also provide adequate opportunity for the accused to explain his or her position. Finally, the inquiry committee is required to prepare and submit a report, which the management of the employer shall consider to decide on consequence management. Completing all these processes within sixty (60) days from the issuance of the show-cause notice may be far from straightforward.

Concluding remarks

The aforementioned changes are only a few notable ones from over one hundred amendments introduced in Bangladesh's labour rules. While the 2022 Amendments of BLR 2015 have been a much-awaited legal update for the legal fraternity and entities doing business in Bangladesh, various provisions thereof may be susceptible to legal challenge in courts of law on the grounds of various provisions being ultra vires, without lawful authority. In the premises, one may expect that corporations may strategically adopt a measured approach in accelerating a widespread implementation of the 2022 Amendments and instead resort to a go-slow approach with a view to seeing how the business community at large responds.

At a time when the country's forex reserves heavily rest on retaining and attracting foreign direct investments, the above important changes may dissuade many. The Government generally, including MOLE in particular, shall engage more closely with key stakeholders to cater for the needs of businesses in the coming days, including attaining further clarity of law and promoting seamless investment experience should Bangladesh want to compete as a lucrative investment destination in the region, and emerge as the next Asian tiger.

ⁱ Bangladesh Labour Rules, 2015, as amended, Rule 111(5)

ⁱⁱ Ibid.

ⁱⁱⁱ Bangladesh Labour (Amendment) Act, 2013, Section 5

^{iv} Bangladesh Labour Act, 2006, as amended, Section 3A

^v Bangladesh Labour Rules, 2015, as amended, Rule 16(2)

^{vi} Bangladesh Labour Act, 2006, as amended, Section 4(8)

^{vii} Bangladesh Labour Rules, 2015, as amended, Rule 18(2)

^{viii} Ibid., Rule 16(5)

^{ix} Bangladesh Labour Act, 2006, as amended, Section 24(1)(d)

^x Bangladesh Labour Rules, 2015, Rule 29(1)(b)

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Citation: Khan, Suhan, 'Bangladesh Labour Rules: 2022 Amendments, Key concerns and implications for businesses' (2023) 3(1) ACI.