

AIRCRAFT LIENS ONLINE



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BANGLADESH

*FM Associates*¹

PART 1

1. LIENS

What is a lien under Bangladeshi law?

The word “lien” means a legal right or interest that a creditor has in another’s property, lasting until a debt or duty that it secures is satisfied. Typically, the creditor does not take possession of the property on which the lien has been obtained.² So, in a “lien”:

- there must be a debtor and a creditor;
- there must be a property, goods, money belonging to the debtor; and
- the creditor has directly or indirectly control or possession over the property, goods, money. This is known as “common law lien”.³

No Act of Parliament provides the definition of the term “lien”⁴ in Bangladesh. However, the Contract Act 1872 ss.170, 171 and 221, the Sale of Goods Act 1930 and the Merchant Shipping Ordinance 1983 and the Railway Act 1890 explain the applicability of “lien” in Bangladesh.

Bailee’s particular lien

As per the Contract Act 1872, where the bailee has rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the

BGD 1

¹ FM Associates (FMA) is one of the leading law firms in Bangladesh. It is a full-service law firm which deals with all aspects of the aviation industry. FMA’s practical experience in the aviation industry is unparalleled in certain situations specifically with regards to airline insurance and compensation. FMA also has extensive experience in the leasing, import and registration of aircrafts and engines coming into Bangladesh for several airlines. The contributing FMA Team constitutes of Barrister Al Amin Rahman, Barrister Sarjean Rahman Lian, Barrister Ahmed Nadim Abdullah, Habibur Rahman and Barrister Zayeema Khan.
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The law in this chapter is up to date to June 2021.

² *Topcom Holdings Ltd v Government of Bangladesh* (10 June 2019—BDHC): LEX/BDHC/0156/2019 at [28].

³ *Topcom Holdings Ltd v Government of Bangladesh* (10 June 2019—BDHC): LEX/BDHC/0156/2019 at [29].

⁴ *Topcom Holdings Ltd v Government of Bangladesh* (10 June 2019—BDHC): LEX/BDHC/0156/2019 at [24].

absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.¹

General lien of bankers, factors, wharfingers, attorneys and policy-brokers

As per the Contract Law 1872, bankers, factors, wharfingers, Advocate of the Supreme Court and policy-brokers may, in the absence of a contract to the contrary, retain, as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.²

Agent's lien on principal's property

As per the Contract Act 1872, in the absence of any contract to the contrary, an agent is entitled to retain goods, papers and other property, whether moveable or immovable, of the principal received by him, until the amount due to himself for commission, disbursements and services in respect of the same has been paid or accounted for to him.³

However, the provisions of the Contract Act relating to lien are not exhaustive and do not negative the existence of a lien in cases not specified therein (as, for instance, the Sale of Goods Act 1930 (the SGA) which deals with an unpaid seller's lien as mentioned below in BGD 4.

Maritime Lien

A maritime lien is known as a lien on a vessel, given to secure the claim of a creditor who provided maritime services to the vessel or who suffered an injury from the vessel's use. This is also termed tacit hypothecation.⁴ A maritime lien will arise when the owner of a maritime vessel incurs debt for which he is personally liable and defaults in repaying the debt. A charge is immediately created and automatically attached to his property, i.e. the vessel as a security for repayment. Therefore, a maritime claim may be turned into a maritime lien to be attached to the maritime res if the claim arises against the owner of that particular maritime res in personam.⁵ Some types of maritime liens are mentioned below:

- Seaman's lien for wages etc—see BGD 8.
- Master's lien—see BGD 8.
- Salvage Lien—see BGD 5.

Lien for rates, terminals and other charges

If a person fails to pay on demand made by or on behalf of the railway administration any rate, terminal or other charge due from him in respect of any animals or goods, the railway administration may detain the whole or any of the animals or goods or, if they have been removed from the railway, any other animals or goods of such person then being in or thereafter coming into its possession.⁶

¹ Contract Act 1872 s.170.

² Contract Act 1872 s.171.

³ Contract Act 1872 s.221.

⁴ *Topcom Holdings Ltd v Government of Bangladesh* (10 June 2019—BDHC): LEX/BDHC/0156/2019 at [33].

⁵ *Kyung Hae Co Ltd v MV BF Glory* (4 May 2014—BDHC): LEX/BDHC/0283/2014 at [73].

⁶ Railway Act 1890 s.55.

2. AIRCRAFT LIENS

What aircraft liens exist under Bangladeshi law? What are their essential characteristics?

As per the Aviation laws and regulations in Bangladesh, clause 1.3.1.1.6 of Aviation Guidelines (Aerodromes) it is stated that the Chairman, Civil Aviation Authority, shall have a lien on the aircraft, its parts and accessories, for such fees and charges as aforesaid.

If payment of such fees and charges is not made to the Chairman, Civil Aviation Authority within fourteen days after a letter demanding payment thereof, has been sent by post addressed to the registered owner of the aircraft, the Chairman, Civil Aviation Authority shall be entitled to sell, remove, destroy or otherwise dispose of the aircraft and any of its parts and accessories, and to apply the proceeds from so doing to the payment of such fees and charges.

Furthermore as per the Contract Act 1872, a bailee can exercise lien and under Sale of Goods Act 1930, a seller can exercise a lien as of statutory rights. On the other hand, a contractual lien will arise when there are contractual terms in the agreements stating that any of the party shall have the right exercising lien upon failure to make payment of their dues. A salvage lien is explained in BGD 5.

Besides the above, there are certain statutory rights of detention exercisable over aircraft. Examples are statutory rights exercisable by the Airports Authority of Bangladesh (the Authority), the Customs and Income Tax Departments of the Government of Bangladesh and so forth. These are dealt with in BGD Pt 2. See also BGD 15 below.

3. REGISTRATION OF AIRCRAFT LIENS

Can aircraft liens be registered in the Bangladeshi Register of Civil Aircraft? Or in any other public register? What is the effect of registration?

There are no provisions for registering aircraft liens in Bangladesh. There is no centralised registrar which is involved in registering the liens or rights associated with the movable property in Bangladesh. Therefore, in the absence of the same, the Civil Aviation Authority of Bangladesh (CAAB) is the only regulatory body for all aviation related activities in Bangladesh which holds all the documents associated with the ownership/lease of aircraft in Bangladesh. If any aircraft is leased from Bangladesh or from abroad, then all the documents related to the lease must be submitted to the CAAB authority during registration of the aircraft in Bangladesh. The documents must include a document namely deregistration of power of attorney which shall validate that the aircraft is bought on lease and the lessor shall be considered as a lienholder until the entire lease payment is cleared. Non-payment of the lease rentals shall automatically trigger the right of lien to be exercised against the lessee on the aircraft as per the deregistration of power of attorney which may include repossession of the aircraft and claiming of damages from the lessee.

BGD 3

Charges/mortgages created by companies registered in Bangladesh can also be registered with the Registrar of Joint Stock of Companies (the RJSC) by using Form XVIII under the Company Act 1994.

A charge (which, inter alia, includes a lien) created by a company incorporated in Bangladesh under the Company Act 1994 for the purpose of (a) securing any issue of debentures; or (b) a mortgage or charge on uncalled share capital of the company; or (c) a mortgage or charge on any immovable property wherever situated or any interest therein; or (d) a mortgage or charge on any book debts or the company; or

(e) a mortgage or charge, not being a pledge on any moveable property of the company except stock-in-trade; or (f) a floating charge on the undertaking or shall so far as any property of the company, security on the company's property or undertaking on any property is required to be registered with the RJSC within 21 days after the date of its creation. Such a charge created over an aircraft has, therefore, to be registered. The effect of non-registration is that the charge would be void against the liquidator and creditors of the company. It shall not, however, prejudice the contractual obligation of repayment of the money secured by the charge. When the charge becomes void the money secured becomes immediately payable.¹

4. SELLER'S LIEN

What is a seller's lien? When will it arise in the case of aircraft?

BGD 4

The SGA 1930 deals with an unpaid seller's lien. Under the SGA, goods mean all kinds of movable property other than actionable claims and money.² Aircraft are treated as goods under the SGA 1930.

Nature of seller's lien

Under the SGA, an unpaid seller of an aircraft who is still in possession of the same is entitled to retain possession until full payment, or tender, of the purchase price where:

- the aircraft has been sold without any stipulation as to credit; or
- the aircraft has been sold on credit, but the term of credit has expired; or
- the buyer becomes insolvent.

The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.³

Loss of Lien

The unpaid seller of goods loses his lien thereon:

- when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;
- when the buyer or his agent lawfully obtains possession of the goods; or
- by waiver thereof.

Note that the unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree for the price of the goods.⁴

¹ Companies Act 1994 s.159.

² Sale of Goods Act 1930 s.2(7).

³ Sale of Goods Act 1930 s.47.

⁴ Sale of Goods Act 1930 s.49(1) and s.49(2).

5. SALVAGE LIEN

What is a salvage lien? When will it arise in the case of aircraft?

BGD 5

In Maritime law, a salvage lien will arise where salvage services are rendered:

- wholly or in part within the territorial waters of Bangladesh in saving life from any Bangladesh ship, or a sailing or fishing vessel registered in Bangladesh; or
- in assisting a vessel or saving the cargo or equipment of a vessel which is wrecked, stranded or in distress at any place on or near the coasts of Bangladesh, including the territorial waters thereof; or
- by any person other than the Receiver of Wreck in saving any wreck.

There shall be payable to the salvor by the owner of the vessel, cargo, equipment or wreck, a reasonable sum for salvage having regard to all the circumstances of the case¹

A salvage lien in respect of the preservation of life is payable by the owner of the vessel in priority to all other claims for salvage.²

An aircraft salvage lien will arise where the salvage services³ are rendered by an aircraft in the same above-mentioned manner as stated above in case of maritime law. The Civil Aviation Act 2017 provides that the provisions of the Merchant Shipping Ordinance 1983 relating to wreck and salvage shall apply to aircraft on or over the sea or tidal waters as they apply to ships.⁴

6. POSSESSORY LIEN

What is a possessory lien? When will it arise in the case of aircraft?

BGD 6

Note that as per the laws of Bangladesh there is no specific term as “possessory lien”. A bailee’s lien can be categorised as a possessory lien. Therefore, where a bailee, in accordance with the purpose of the bailment, has rendered any service involving the exercise of labour or skill in respect of the aircraft delivered to him for that purpose, he has, in absence of a contract to the contrary, a right to retain the aircraft until he has received due remuneration for the services rendered in respect of the aircraft.⁵ Under a possessory lien, the lienholder is only entitled to retain the aircraft in its possession.

It cannot exercise any remedy of self-help, such as removing any parts of the aircraft. A bailee’s lien is in respect of services involving an exercise of labour or skill rendered in relation to the aircraft. It will not arise for merely making arrangements to maintain an aircraft for payment if no improvement in the aircraft takes place, nor is any skill or labour exercised in respect of the aircraft.

A possessory lien does not arise unless the lienholder has a right to continuing possession of the aircraft.

¹ Merchant Shipping Act 1983 s.468(1).

² Merchant Shipping Act 1983 s.468(2).

³ Merchant Shipping Act 1983 s.43.

⁴ Civil Aviation Act 2017 s.20.

⁵ Contract Act 1872 s.170.

7. CONTRACTUAL LIEN

What is a contractual lien? When will it arise in the case of aircraft?**BGD 7**

Parties may create a lien by contract. A right of lien may be created on behalf of a lienholder through insertions of specific terms in a contract whereby a lienholder may exercise lien over an aircraft for failure of the following payments:

- If the lease rentals are not paid within the term of the lease.
- When a service provider provides a service in the form of a labour on an aircraft e.g., aircraft repairs or for refurbishment or any other improvements in accordance with a contractual agreement but the payment is outstanding.

The terms of the contract have to be certain.¹ If parties include terms like sale of the aircraft in the event of non-payment, claim back the aircraft or for the lien to continue in the absence of possession, in the agreement then they will have to be bound it. The nature, and extent, of this lien will be governed by the terms of the contract unless any of the terms and conditions are in conflict with any of the laws of Bangladesh. Nevertheless, if there is any conflict between contractual lien and bailees' lien, bailees' lien shall always take precedence over contractual lien due to their statutory nature. If there is any conflict between contractual lien and mortgages, mortgages shall always take precedence over contractual lien since they are registrable.

Pledge

A Pledge is defined in the Contract Act 1872 as the bailment of goods as security for payment of a debt or performance of a promise is called “pledge”. The bailor is in this case called the “pawnor”. The bailee is called the “pawnee”.²

If the pawnor makes default in payment of the debt, or performance, at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.³

“Lien” is almost similar to “pledge”,⁴ yet different. Pledge has been defined in the Contract Act 1872 s.172 as “the bailment of goods as security for payment of a debt or performance of a promise is called ‘pledge’”. The bailor is in this case called the “pawnor” and the bailee is called the “pawnee”.

Pledge cannot be categorised as a lien since a lien gives only a personal right to retain possession. The creditor holding this security cannot transfer it to any other person, nor can he himself enforce it by sale of his own motion, without the aid of judicial proceedings whereas A creditor holding a pledge may, on the other hand, transfer his interest to another, and he may himself enforce his security by sale without the aid of a court.⁵

¹ Contract Act 1872 s.29.

² Contract Act 1872 s.172.

³ Contract Act 1872 s.176.

⁴ *Topcom Holdings Ltd v Government of Bangladesh* (10 June 2019—BDHC): LEX/BDHC/0156/2019 at [25].

⁵ *Topcom Holdings Ltd v Government of Bangladesh* (10 June 2019—BDHC): LEX/BDHC/0156/2019 at [27].

The pledge of an aircraft under Bangladeshi law is rare, since it requires actual (or constructive) delivery of the property to the creditor. In the case of aircraft, the owner invariably wants to continue using it. Further, banks do not want to take possession of an aircraft since they will then, generally, bear responsibility for its preservation and upkeep. As a result, the common form of security granted over an aircraft for a debt is a mortgage. In any case, mortgage generally conveys a greater security right to the creditor, who will hold the property subject to the equity of redemption (as opposed to a pledge where the general property in the aircraft remains with the pledgor).

8. OTHER TYPES OF AIRCRAFT LIEN

Are there any other types of aircraft lien? Or similar rights that do not give rise to a lien?

There are no other types of aircraft liens in Bangladesh (except as discussed above). However, there are many maritime liens which are applicable only in case of ships and not in the case of aircrafts.

BGD 8

9. PRIORITY OF AIRCRAFT LIENS

What is the priority of aircraft liens under English law?

There is no specific legislation, which deals with priority of liens in Bangladesh. However, on the basis of various statutes and rulings of the courts in India and England (which have persuasive value) the following would seem to be the order of priority in respect of aircraft liens:

BGD 9

- Statutory detention rights. (shall take precedence over all liens)
- Contractual lien.
- Salvage lien.¹
- Possessory lien.
- Registered mortgages.²
- Recovery of revenue or other Government Dues.³
- Unregistered mortgages.

10. RIGHTS OF OWNER OR LESSOR V LIENHOLDER

What are the rights of the owner or a lessor of an aircraft against a lienholder?

The owner of an aircraft generally has the greatest “right” to the aircraft as against third parties. However, this right is not wholly unqualified if there is a lien.

BGD 10

¹ The salvage lien takes priority over the other non-statutory and non-contractual liens since salvage payments made with a view to saving the aircraft from loss or destruction are to be paid back in preference to all other claims.

² *Tax Recovery Officer XVI, New Delhi v Punjab & Sindh Bank* 1986 (161 I.T.R.—0220 Delhi). In this matter, the Delhi High Court, after analysing the ruling of the Supreme Court of India in *Builder Supply Corp v Union of India* 1965 (056) I.T.R. 91 (SC) held that, when there is a secured creditor and the State is merely seeking to recover its dues, the secured creditor has the priority.

³ *Builder Supply Corp v Union of India* 1965 (056) I.T.R. 91 (SC).

Salvage lien

If the aircraft has incurred a salvage lien, a right is vested in the lienholder (salvor) to receive, from the owner of the aircraft, a reasonable sum for having rendered salvage services in saving life, cargo or wreck. The aircraft, however, shall remain in the possession of the owner.

Possessory lien

An example would be the seller's lien (see BGD 4 above). The owner (as the purchaser of the aircraft) will be subject to a seller's lien to the extent he fails to pay the aircraft's purchase price and the seller still remains in possession of the aircraft.

Contractual Lien

If there is any clause stipulated in the contract for repossessing the aircraft upon failure to clear the lease payments, then the lessor can claim back the aircraft as per the terms and conditions of the contract.

11. ENFORCEMENT OF AIRCRAFT LIENS

How does an aircraft lienholder enforce its lien under Bangladeshi law? What Bangladeshi court will have jurisdiction?

Bailee's lien

BGD 11

The lienholder is entitled to retain possession of the aircraft until its demand is paid.¹ It cannot exercise any remedy of self-help or sale. However, the bailee can file a suit for recovery of the sums owing to it.

Seller's lien

Under the SGA, an unpaid seller is entitled not only to retain the possession of the aircraft in its custody, it can also resell the aircraft after notice to the buyer as provided under the SGA.²

Contractual lien

If a party makes default in payment of a debt (or the performance of an obligation) in accordance with an agreement in respect of the goods, the lienholder may bring a suit against the party on the debt (or obligation) and retain the goods as per the terms of the agreement.

Alternatively, it may sell the aircraft on giving the party reasonable notice of sale. Any other secured creditor who has lien over the aircraft or owes money can bring before a Bangladeshi court of competent jurisdiction a petition for the appointment of a receiver³ or application for winding up of the proceedings⁴ or the insolvency of an individual.⁵

¹ Contract Act 1872 s.170.

² SGA s.46(1)(c) read with s.54(2).

³ Order XL1(1) CPC 1908.

⁴ Company's Act 1994 s.241.

⁵ Bankruptcy Act 1997 s.9.

Jurisdiction of Bangladeshi Courts

Every suit shall be instituted in the court of the lowest grade competent to try it.¹

Every suit shall be instituted in a court within the local limits of whose jurisdiction:

- “the defendant ... at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or
- any of the defendants, ... at the time of the commencement of the suit, actually or voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or
- the cause of action, whether wholly or in part, arose in Bangladesh.”²

12. RIGHTS IN REM AGAINST AIRCRAFT

Is there a right in rem against an aircraft under Bangladeshi law?

A right in rem allows a party to file a lawsuit against property rather than against an individual (which is called a right in personam). There is no specific provision in the laws of Bangladesh which recognises a right in rem against an aircraft.

BGD 12

13. INTERNATIONAL CONVENTIONS AND LIENS

Is the Bangladeshi party to any international Conventions that relate to aircraft liens? How do these Conventions apply?

‘Montreal Convention’ means the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed in Montreal on 28 May 1999. Bangladesh incorporated the Montreal Convention into its local legislation by the Carriage by Air (Montreal Convention) Act, 2020.

1948 Geneva Convention on Rights in Aircraft

Although Bangladesh has ratified the Geneva Convention 1948 it has not been incorporated in the Bangladeshi laws by passing any act or statute. Therefore, the provisions are not applicable and may not be implemented under the laws of Bangladesh.

BGD 13

1933 Rome Convention on Precautionary Arrest

Although Bangladesh has ratified the Geneva Convention 1948 it has not been incorporated by passing any act or statutes. Therefore, the provisions are not applicable and may not be implemented under the laws of Bangladesh.

14. RECOGNITION AND PRIORITY OF FOREIGN AIRCRAFT LIENS

Would a Bangladeshi court recognise foreign aircraft liens?

As a matter of legal principle and practice, a Bangladeshi court will first determine whether the lien is:

BGD 14

¹ CPC 1908 s.15.

² CPC 1908 s.20.

- substantive or procedural; and
- contractual or proprietary (i.e. whether it also creates an interest in the aircraft).

In both cases, it is submitted that the law the Bangladeshi court would apply to determine these matters would be the *lex causae* of the claim. Where the *lex causae* holds that the foreign aircraft lien is purely contractual in nature (or the matter in dispute relates to the contractual aspects of the foreign aircraft lien only) the governing law will be the proper law of the contract. This will be the law chosen by the parties and, in the absence of a choice, the law of the country with which the contract has its closest and most real connection.

Where the aircraft lien creates or conveys a proprietary right then the proper law of the transfer (decided in the same way as the proper law of the contract) would be more in accordance with the implicit wishes of the parties and more likely to uphold the principle of validation.

PART 2

15. RIGHTS OF DETENTION AND SALE

What rights of detention and sale may be exercised against aircraft in Bangladesh?

BGD 15

In Bangladesh, the Civil Aviation Authority (CAA) works as the watchdog to manage, plan, construct, operate and repair of all civil airports and aerodromes including their surrounding airspace. This Authority performs the required functions to control and manage all civil aviation matters in Bangladesh. The CAA was formulated by virtue of the Civil Aviation Authority Act 2017 s.3.¹

Detain

In certain circumstances, the concerned authorities possess the power to detain an aircraft. The Civil Aviation Act 2017 s.18(2)² depicts that:

“The Chairman or any authority approved by the Government may detain any aircraft on any of the following grounds, namely:

- it is presumed, considering the nature of the expected flight, that the flight is dangerous for the passengers on board or for any person or property on ground; or
- such detention is necessary for ensuring compliance of this Act, rules or ANO.”

Therefore, it is evident that, by virtue of the above provision, both the Chairman of Civil Aviation Authority or any office duly appointed by the government may seize an aircraft, if any of them think that the flight may cause harm to the passenger or any person or to a property. In addition to the above, both the Chairman of Civil Aviation Authority or any office duly appointed by the government may also seize an aircraft, if such seizure is needed for making adherence to the Civil Aviation Act, Rules or Air Navigation Order (ANO).

Moreover, the Civil Aviation Rules 1984 r.332 stipulates that:

¹ Civil Aviation Authority Act is Act No.3 of 2017; this Act has repealed the Civil Aviation Authority Ordinance 1985.

² Civil Aviation Act 2017 is Act No.18 of 2017; this Act has repealed the Civil Aviation Ordinance 1960.

“An authority authorised under section 8 of the Civil Aviation Ordinance, 1960 to detain aircraft may do so by the issue of a written direction to the pilot-in-command or some other person for the time being in-charge of the aircraft to be detained, or taking such other steps as may be necessary to make the detention effective. If an aircraft detained by a person so authorised is housed or kept at a Government aerodrome, the housing or picketing charges normally applicable shall be payable in respect of the whole period during which it is detained.”

This rule further affirms that the CAA can detain an aircraft to comply with the Civil Aviation Act 2017 s.18(2). Though the rule refers to the Civil Aviation Ordinance 1960 s.8, which promulgated almost similar provision as depicts by the Civil Aviation Act 2017 s.18(2). Significantly, it should be noted that despite the Civil Aviation Act 2017 repealing the Civil Aviation Ordinance 1960, any act done, measures taken, rules made, any order, ANO, circular, or notice issued, certificate, licence or permit given or any agreement entered into or document signed under the said Ordinance shall be deemed to have done, taken, entered, issued, given, made or signed under Civil Aviation Act 2017.¹

In furtherance to the above, the Civil Aviation Act s.34² states that:

“An order may be issued to the effect that the aircraft, article or substance, as the case may be, in respect of which the offence has been committed under this Act, shall be forfeited to the Government.”

Thus, in accordance to the above section Chairman of the CAA may issue an order to forfeit an aircraft, if the aircraft committed an offence under the Civil Aviation Act.

Sale

Theoretically, there is no explicit provision in respect to sale of aircraft in the Civil Aviation Act. However, by way of the Civil Aviation Act s.11³ the Chairman of the CAA has the authority to impose fine on an aircraft for breaching any rules and regulations. Thereafter, if the aircraft fails to pay the fines imposed by the Chairman within the stipulated time, then the fine can be derived by way of procedures as prescribed in the Public Demands Recovery Act 1913.⁴ Further, any amount which becomes due from any person or organisation under Civil Aviation Authority Act shall be recoverable as public demand under the provisions of the Public Demands Recovery Act 1913.⁵ In accordance with the Public Demands Recovery Act, when any arrear or money is due to any person except the Collector, the person needs to submit a written application to the concerned Certificate-Officer for the collection of the due.⁶ After receiving of an application for collection of due, the Certificate-officer, if thinks that the due is recoverable and that recovery is not barred by law then shall sign a certificate of requisition. Consequently, shall serve a notice to the certificate-debtor for conducting hearing. After conducting hearing and fulfilling

¹ Civil Aviation Act 2017 s.48.

² Civil Aviation Act 2017 is Act No.18 of 2017; this Act has repealed the Civil Aviation Ordinance 1960.

³ Civil Aviation Act 2017 is Act No.18 of 2017; this Act has repealed the Civil Aviation Ordinance 1960.

⁴ Civil Aviation Act 2017 s.11(5).

⁵ Civil Aviation Authority Act 2017 s.17(5).

⁶ Public Demands Recovery Act 1913 s.5.

other conditions the Certificate-Officer may order execution of a certificate by attachment and sale, or by sale of any property.¹

To recapitulate, it can be said though there is no clear reference pertaining to sale of aircraft in the Civil Aviation Act, nevertheless, by virtue of the Public Demand Recovery Act an aircraft can be detained and/or sold for infringement of Civil Aviation Act, rules or ANO or any condition issued by the CAA.

16. AIRPORT CHARGES

Under Bangladesh law, can an aircraft be detained and sold for unpaid airport charges? In what circumstances?

Charge

BGD 16

The Civil Aviation Authority Act 2017 s.17 states that the Government of Bangladesh may impose and collect government fees or taxes on any civil aviation matters, where necessary. Subsection 2 of the same section further prescribes that CAA may, with the prior approval of the Government, levy and collect the following fees, charges, royalties, premiums and rentals, namely:

- air route navigation and aeronautical charge;
- service charge to be paid by the passengers travelling by air;
- fees, charges, premium and rentals for the use of any property including aircraft belonging to the CAA;
- aircraft landing, parking and housing charges;
- security and other relevant charges;
- fees and charges on any certificate or license issued, and power or approval given by the CAA, and transfer and renewal thereof, and on any activities related to inspection, audit, oversight, holding examination and test; and
- any other charges related to civil aviation.

In addition to the above section, the Civil Aviation Rules 1984 r.12 states that the Chairman may, by notification in the Official Gazette, specify the fees in respect of aircraft registration or any other matter as may be required. The Civil Aviation Rules 1984 r.269 also states that the charges for landing, parking and housing at Government aerodromes and airports and for providing security checking of embarking passengers and their hand-carried bags and route navigation facilities in the territory of Bangladesh shall be applicable to all aircraft whether registered in Bangladesh or in any other State and shall be leviable in accordance with the provisions contained in relevant Schedule.

Detain

As described above,² the CAA may detain an aircraft if such detention is necessary for ensuring compliance of the Civil Aviation Act, rules or ANO. Since, payment of airport charges is necessary for the compliance of the Civil Aviation Act, rules or ANO, hence, CAA may detain an aircraft for non-payment of airport charges.

¹ Public Demands Recovery Act 1913 s.14.

² See BGD 17.

Sale

To collect the charge due to the CAA, the CAA may sell the aircraft by way of the process described in Public Demands Recovery Act 1913.¹

In accordance with the laws of Bangladesh, an aircraft can be detained, and sold, for the non-payment of airport landing charges. Such a detention would be to secure compliance with the rules relating to payment of charges for the landing, warehousing or parking of an aircraft.

17. AIR NAVIGATION CHARGES

Under Bangladesh law, can an aircraft be detained and sold for the non-payment of air navigation charges? In what circumstances?

In accordance with the laws of Bangladesh, an aircraft can be detained, and sold, for non-payment of charges relating to air navigation. Air navigation charges are payable under the Aviation Laws of Bangladesh. Non-payment of the same would be a violation of the Civil Aviation Act, rules or ANO. Therefore, the aircraft can be detained and sold by the CAA under the Civil Aviation Act and Civil Aviation Rules.

BGD 17

18. INTERNATIONAL AIR NAVIGATION CHARGES, INCLUDING EUROCONTROL

Under Bangladesh law, can an aircraft be sold for the non-payment of international air navigation charges, such as Eurocontrol charges? In what circumstances?

In accordance with the laws of Bangladesh, an aircraft can be detained, and sold, for non-payment of charges for air navigation services provided to international flights since such detention would be to secure compliance with the rules relating to payment of charges for providing air traffic services, aeronautical communication and navigational aids at airports. However, the Aviation Law does not deal with detention of aircraft for non-payment of international air navigation charges such as Eurocontrol.

BGD 18

19. LICENSING CONTRAVENTIONS

Under Bangladesh law, can an aircraft be detained and sold for contraventions of English licensing requirements? In what circumstances?

In accordance with the laws of Bangladesh, an aircraft can be detained, and sold, for contraventions of licensing requirements as this would be a violation of the Civil Aviation Act, rules or ANO.

BGD 19

Further, as mentioned in the Civil Aviation Act 2017 s.11, if any licensee, or the certificate or permit holder violates any provision of this Act, rules or ANO or any condition of such licence, certificate, registration certificate or permit, the Chairman of CAA may suspend, revoke or cancel the relevant licence, certificate, registration certificate or permit, or impose restrictions, in such manner as may be prescribed, on the licensee, or on the certificate or permit holder. In addition to this, the Chairman may also impose fine which may extend to 50 lac taka or lodge a case under the same Act.

¹ See BGD 17.

20. AIR NAVIGATION CONTRAVENTIONS

Under Bangladesh law, can an aircraft be detained and sold for contraventions of Air Navigation regulations? In what circumstances?

BGD 20

In accordance with the laws of Bangladesh, an aircraft can be detained, and sold, for contraventions of Air Navigation regulation as this would be a violation of the Civil Aviation Act, rules or ANO.

Further, as per the Civil Aviation Act 2017 s.24, if any person violates any provision of this Act, or rules or ANO made or issued there under or any condition of a certificate, registration certificate, licence or permit issued under this Act, it shall be an offence, and therefore, he shall be punished with rigorous imprisonment for a term which may extend to five years, or with fine which may extend to Taka one crore, or with both.

21. CUSTOMS CONTRAVENTIONS

Under Bangladesh law, can an aircraft be detained and sold for contraventions of Customs requirements? In what circumstances?

BGD 21

In accordance with the laws of Bangladesh, an aircraft can be detained, and sold, for contraventions of Customs requirements. By virtue of the Customs Act 1969 s.202, when, under this Act, any duty or regulatory duty is payable to the Government by any person or a penalty is adjudged against any person or a notice or demand is served upon any person calling for the payment of any amount unpaid which may be payable by way of duty, regulatory duty, penalty or under any bond, security, guarantee or any other instrument executed under this Act or the rules or orders and such duty, regulatory duty, penalty or other sums due are not paid within the time it was required or ordered to be paid, the appropriate officer may at any time:

- require the proper Excise Officer to recover such amount by attachment and sale of excisable goods or any plant, machinery and equipment used for the manufacture of goods or any other goods in the factory or bonded warehouse belonging to such person; and
- recover, or require any other officer of Customs to recover, such amount by detaining and selling any goods belonging to such person, which are under the control of the customs authorities.

Furthermore, if the amount is not recovered from such person in the manner provided above, the appropriate officer may prepare a certificate signed by him specifying the amount due from the person liable to pay the same and send it to the Collector of the district or to a certificate officer in whose jurisdiction such person resides or owns any property or conducts his business and such Collector or certificate officer shall, on receiving the certificate, proceed to recover the amount specified in the certificate as a public demand or an arrear of land revenue.

22. NOISE AND EMISSIONS CONTRAVENTIONS

Under Bangladesh law, can an aircraft be detained and sold for contraventions of noise and emissions requirements? In what circumstances?

BGD 22

As prescribed in the Civil Aviation Rules 1984 r.20, the Chairman of CAA may specify the limit of noise and vibration that may be caused by an aircraft (including a military aircraft) at a government aerodrome, licensed aerodrome or at aerodromes

at which the manufacture, repair or maintenance of aircraft is carried out. Rule 276 further mentioned that an aircraft registered in Bangladesh shall not be engaged in international air navigation unless there is in force in respect of it a noise certificate issued or validated by the Chairman. The rules shall, mutatis mutandis, apply to aircraft registered in a foreign State while flying in or over the territory of Bangladesh.¹

Where the Chairman of CAA is satisfied that reasonable doubt exists concerning the compliance of an aircraft registered in Bangladesh with the noise certification requirements, he may suspend the noise certificate of the aircraft or of each aircraft of the type for such period as he considers necessary to resolve the doubt.²

There is no explicit rule in respect to detain and sale of aircraft for noise and emission contraventions.

23. PATENT INFRINGEMENTS

Under Bangladesh law, can an aircraft be detained and sold for patent infringements? In what circumstances?

There is no explicit rule whether an aircraft can be detained and sold for patent infringements.

The Civil Aviation Act 2017 s.43 states that the provisions of the Patents and Designs Act 1911 s.42 shall, with necessary adaptation, be applicable to the use of an invention on any aircraft not registered in Bangladesh for navigation in Bangladesh. The Patents and Designs Act 1911 s.42 states that:

BGD 23

- A patent shall not prevent the use of an invention for the purposes of the navigation of a foreign vessel within the jurisdiction of any court in Bangladesh, or the use of an invention in a foreign vessel within that jurisdiction, provided it is not used therein for or in connection with the manufacture or preparation of anything intended to be sold in or exported from Bangladesh.
- This section shall not extend to vessels of any foreign State of which the laws do not confer corresponding rights with respect to the use of inventions in Bangladesh vessels while in the ports of that State, or in the waters within the jurisdiction of its courts.

24. PUBLIC HEALTH REQUIREMENTS

Under Bangladesh law, can an aircraft be detained and sold for breaches of public health requirements? In what circumstances?

The Civil Aviation Act 2017 s.21 provides that for the protection of public health, the Government may, by notification in the Official Gazette, make rules to prevent any infectious or contagious diseases to be introduced or spread, or likely to be introduced or spread from any aircraft arriving, or being at, or leaving any aerodrome or airport.

BGD 24

Further, s.22 of the same Act provides that if the Government is satisfied that Bangladesh or any part thereof is threatened with an outbreak of any dangerous epidemic disease, and there is an apprehension of affection or introduction or spread of such disease by an aircraft, the Government may take any kind of emergency

¹ Civil Aviation Rules 1984 r.279.

² Civil Aviation Rules 1984 r.279.

measures for the protection of public health. To serve this purpose, the Government may issue any order, direction or circular for taking emergency measures. The order, direction or circular issued shall have effect for three months from the date of notification. It should be noted that the Government may if feels necessary may extend the time for a further period not exceeding three months.

Hence, in accordance with the laws of Bangladesh, an aircraft can be detained, but not sold, for public health requirements.

25. TAX LAW CONTRAVENTIONS

Under Bangladesh law, can an aircraft be detained and sold for contravention of Bangladesh tax laws? In what circumstances?

BGD 25

In accordance with the laws of Bangladesh an aircraft can be detained, and sold, for contraventions of Bangladesh tax laws.

As per the Income Tax Act 2023 ss.216 and 217, when an assessee is in default or is deemed to be in default in making payment of tax, the Deputy Commissioner of Taxes may forward to the Tax Recovery Officer a certificate for recovery of the tax, under his signature specifying the amount of arrears due from the assessee; and such certificate may be issued notwithstanding that proceedings for recovery of the arrears by any other mode have been taken. Upon receipt of a certificate forwarded to him, the Tax Recovery Officer shall, notwithstanding anything contained in any other law for the time being in force, proceed, in accordance with the rules made in this behalf by the Board, to recover from the assessee the amount specified in the certificate by one or more of the following modes, namely:

- attachment and sale, or sale without attachment, of any movable or immovable property of the assessee;
- arrest of the assessee and his detention in prison; and
- appointment of a receiver for the management of the movable and immovable properties of the assessee.¹

In addition to the above, the Deputy Commissioner of Taxes may forward a certificate under his signature specifying the amount of arrears due from an assessee to the Collector of the District in which the office of the Deputy Commissioner of Taxes is situate or the district in which the assessee resides or owns property or carries on business or profession, and the Collector, on receipts of such certificate shall proceed to recover, from such assessee the amount specified therein as if it were an arrear of land revenue.

On a separate note, by way of the Value Added Tax and Supplementary Duty Act 2012 s.95, where any amount of VAT, supplementary duty, turnover tax, interest monetary penalty or fine remains payable by a defaulting taxpayer, the Commissioner shall initiate a proceeding for the recovery of such arrear taxes from such defaulter. The Commissioner shall, in matters of recovery of arrear taxes, take the following actions, namely:

- deduct, in the prescribed manner, the amount of arrear tax from the money the defaulting taxpayer may have under the control of any authority of Income Tax, Customs, VAT or Excise;
- direct any person or associate or financial institution or bank holding any money of the defaulting taxpayer to pay the amount by such person or bank;

¹ Income Tax Act 2023.

- issue an order directing to stop the supply of any good or any service from the business premises of the defaulting taxpayer;
- lock the business identification number in the Bill of Entry processing system in the Custom House to stop clearance of imported goods of the defaulting taxpayer;
- issue an order, in the prescribed manner, directing to freeze the bank accounts of the defaulting taxpayer;
- issue an order directing to seal the business premises of the defaulting taxpayer or seal such business premises within the prescribed time and in the prescribed manner; or
- recover the arrear taxes by attaching and selling, in the prescribed manner, any of the defaulting taxpayer's immovable property and by seizing and selling any of his movable property.

26. CRIMES

Under Bangladesh law can aircraft be detained and sold in connection with crimes? In particular, offences relating to terrorism and drug trafficking?

In accordance with the laws of Bangladesh, an aircraft can be detained, and sold, in connection with crimes.

BGD 26

The Anti-Terrorism Act 2009 s.23A provides that if an officer investigating an offence committed under this Act, has reason to believe that any property in relation to which an investigation is being conducted, have proceeds of terrorism, he shall, with prior approval in writing of the District Magistrate in which district such property is situated, may be allowed to seize such property and where it is not practicable to seize such property, make an order of attachment directing that such property shall not be transferred or otherwise dealt with except with prior permission of the officer making such order. On the other hand, where the judge is satisfied that any property is seized or attached for deriving from terrorist activities or it constitutes from proceeds of terrorism, the court may pass an order to confiscate the property.¹

The Anti-Terrorism Rules 2013 r.33 states that if any property is confiscated under the Act, the Government may, subject to the permission of the court, sell or in any other way dispose of such property other than the property which is required to be destroyed under any other law, by means of an open auction or by any other commercially profitable and lawful means. The proceeds of the sale or disposal of the property in any other legal manner shall be deposited into the treasury of the State. The confiscated property or the proceeds of the sale of the confiscated property may be utilised for the purposes of combating terrorism or terrorist financing.

The Anti-Terrorism Rules 2013 r.22 puts denial of permission for any aircraft to take off or land in the territory when owned, leased or operated by or on behalf of the individual or entities enlisted by the respective Committee of United Nations Security Council. In the airport, the contact point of Civil Aviation Authority of Bangladesh (CAAB) shall check the list of UNSCR committee and shall take appropriate measure if any match found. Where any match found, CAAB shall immediately inform about the details of the aircraft to the traffic control authority of the airport. If the aircraft has already been landed, traffic control authority of the concerned airport shall take appropriate measures to put embargo regarding taking

¹ Anti-Terrorism Act 2009 s.35.

off such aircraft and the Contact Point of CAAB shall inform the same to the concerned law enforcing agency as well as the Focal Point of Ministry of Civil Aviation and Tourism.

Bangladesh is a signatory to all three United Nation's Convention dealing with the drug abuse and trafficking. These include the:

- Single Convention on Narcotic Drugs 1961¹;
- Convention on psychotropic substances 1971²; and
- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988.³

In accordance with the Narcotics Control Act 2018 s.26, if an offence pertaining to drug is committed, the drugs, money, equipment, equipment, materials, containers, containers, packaging, vehicles or any other object with or with the help of which the offense has been committed shall be confiscated.

27. WAR OR NATIONAL EMERGENCY

Under Bangladesh law, can aircraft be detained and sold by reason of war or other national emergency? In what circumstances?

BGD 27

There is no explicit law, whether an aircraft can be detained and sold by reason of war or other national emergency. However, from the interpretation of the below provisions, it can be said that an aircraft may be detained, but may not be sold by reason of war or other national emergency.

The Constitution of Bangladesh art.141A prescribes that if the President is satisfied that a grave emergency exists in which the security or economic life of Bangladesh, or any part thereof, is threatened by war or external aggression or internal disturbance, he may issue a Proclamation of Emergency for 120 days.

The Civil Aviation Act 2017 s.23 states that notwithstanding anything contained in any other provision of this Act, in the event of war or any other emergency, or in the interest of public safety or tranquillity, the Government may, by notification in the Official Gazette, issue any of the following orders, namely:

- to cancel or suspend, subject to such conditions and time-limit as may be specified in the notification, any certificate, registration certificate, licence or permit issued under this Act, rules or ANO;
- to prohibit or regulate, subject to such conditions as may be specified in the notification, the flight of any aircraft in or over Bangladesh;
- to prohibit or regulate, subject to such conditions as may be specified in the notification, the activities or conducts of any aerodrome or airport, aircraft training organisation or aircraft maintenance organisation; or
- to direct that any aerodrome or airport, aircraft training organisation or aircraft maintenance organisation, or place where aircrafts are manufactured, repaired or kept, together with any machinery, plant, material or things used for the operation, manufacture, repair or maintenance of aircraft

¹ See https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-15&chapter=6 [Accessed 21 June 2021].

² See https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-16&chapter=6&clang=_en [Accessed 21 June 2021].

³ See https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-19&chapter=6&clang=_en [Accessed 21 June 2021].

shall be delivered to the Authority in such manner and within such time-limit as may be specified in the notification, for being placed at the disposal of the Government.

28. OTHER AIRCRAFT DETENTION AND SALE RIGHTS

What other rights are the under Bangladeshi law to detail, and sell, aircraft?

In accordance with the Code of Civil Procedure 1908 s.51, the court may, on the application of the decree-holder, order execution of the decree:

BGD 28

- by delivery of any property specifically decreed;
- by attachment and sale or by sale without attachment of any property;
- by arrest and detention in prison;
- by appointing a receiver; or
- in such other manner as the nature of the relief granted may require.

On the other hand, by way of the Code of Criminal Procedure 1898 s.88, the court issuing a proclamation for person absconding may at any time order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person.

29. PRIORITY OF AIRCRAFT DETENTION RIGHTS

What is the priority of aircraft detention rights? In particular, what is their priority over aircraft liens?

There is no specific law or regulation, which describe the priority of aircraft detention rights.

BGD 29

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