



**INVESTMENT GUIDE
BANGLADESH | 2018**

BANGLADESH

FOREIGN INVESTMENT

GUIDE

2018



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Contents are up to date as of May 2018

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Author's note

Bangladesh is a country of vast opportunities and challenges.

Identified as one of the Next Eleven (N-11) by Goldman Sachs and included in the Global Growth Generators countries, Bangladesh has maintained an impressive track record on growth and development in the past decade, with an economy growing at nearly 6% per year. With nearly 160 million inhabitants on a landmass of 147,570 square kilometers, sustained growth has generated higher demand and opportunities for the electricity, transport, and telecommunication services notably.

In 2016, Bangladesh progressed from a lower income country to a lower-middle income country. By 2021, Bangladesh aspires to be a higher middle-income country.

Based on our regional experience in assisting investors developing their operations across Asia, we believe Bangladesh has one of the most investor friendly foreign direct investment (FDI) regimes in the region. However, on a practical level, at times it appears challenging to foreign investors. The reality is that Bangladesh is still a frontier market country and as such, there are issues which investors coming from more modern jurisdictions find unusual or unacceptable.

However, in our experience, those problems are mainly based on cultural differences and although at times appear to be very difficult to deal with, can be overcome. The numerous foreign investment success stories in areas we have been involved in include, the manufacturing, service, power, oil and gas sectors, demonstrate that Bangladesh is a land of immense opportunities that can be seized with the right guidance.

Shahwar Nizam

Bangladesh Country Partner

Foreign Investment in Bangladesh

Bangladesh is situated in the fertile Ganges Delta in South Asia. It has a rapidly developing, market-based economy. According to the International Monetary Fund (IMF), Bangladesh ranked as the 42nd largest economy in the world in 2010 in purchasing power parity terms, and 58th largest in nominal terms. It is considered to be one of the Next 11 (N11) as identified by “*Goldman Sachs investment bank and economist Jim O’Neill*” and the Group of Eight Developing Islamic Countries (D8) economies.

Bangladesh’s economy has grown by 5-6% per year on average since 1996 despite frequent natural disasters, political instability, poor infrastructure, and slow implementation of economic reforms. Although more than half of the gross domestic product (GDP) is generated through the service sector, 47% of Bangladeshis are employed in the agricultural sector, with rice as the single-most important product. The ready-made garments industry, textiles, leather products, jute, ceramics, and seafood processing are also important revenue generating sectors for Bangladesh.

The Bangladesh legal system relating to contract, company, banking, bankruptcy and other commercial laws has been in a state of ongoing development and new laws are being implemented on a regular basis to meet and facilitate the needs of foreign and local investors. Additionally, Bangladeshi government ministries and officials issue new regulations from time to time. DFDL has an excellent working relationship with the relevant government stakeholders to ensure that our understanding of the legal regulatory regime is always current and consistent with the latest developments.

Foreign investment policy

Bangladesh offers an unparalleled investment climate compared to the other South Asian economies. The key endowments to Bangladesh’s investment climate today are:

- strategic location, regional connectivity and worldwide access;
- strong local market and growth;
- large and low-cost labour force;

- fiscal incentives;
- export competitiveness;
- easy access to the global market;
- public private partnership (PPP); and
- export processing zones.

Bangladesh offers the most liberal FDI regime in South Asia, with no prior approval requirements or limits on equity participation and repatriation of profits and income in most sectors. Except in these five reserve sectors, all industries are open for private investment:

- arms, ammunition and other defense equipment and machinery;
- production of nuclear energy;
- forest plantation and mechanized extraction within the bounds of reserved forests;
- security printing (currency notes); and
- minting.

Foreign persons and entities are allowed to own up to 100% of the equity in Bangladeshi companies (except for certain regulated entities) and there are also no restrictions on ownership of land by 100% foreign owned companies.

Investment structures

Bangladesh offers generous opportunities for investment under its relaxed Industrial Policy and export-oriented, private sector-led growth strategy. Except for the previously stated reserved sectors, foreign investors are free to make investments in Bangladesh in industrial enterprises. Foreign companies wishing to do business or establish a presence in Bangladesh have a number of options.

Foreign direct investment

FDI in the industrial or development projects requires registration with the Bangladesh Investment Development Authority (BIDA). BIDA, previously known as Board of Investment, was established by the Bangladesh Investment Development Authority Act 2016 to deal with matters relating to FDI, as well as for promoting investment into Bangladesh. The main objective of BIDA is to promote domestic and foreign investment as well as to enhance the international competitiveness of

Bangladesh. BIDA also provides the necessary facilities and assistances for setting up industries. Determining the route to invest generally depends on the particular sector and the FDI policy implemented by the Government of Bangladesh.

If a Bangladeshi company receives foreign investment and foreign funds, it must notify the Bangladesh Bank, the central bank of Bangladesh, through its local bank within a specific time period of receiving the investment, and documents evidencing the issuance of shares must also be submitted within 14 days of shares being issued to the foreign investor.

Wholly owned subsidiaries

Foreign companies are permitted to establish wholly owned subsidiaries in Bangladesh. Such companies may be established as a private limited or public limited company. Foreign equity ownership may be up to 100% in most sectors including construction, information technology and development. Foreign entities may acquire an existing Bangladeshi company or incorporate a new company complying with the requirements of the Registrar of Joint Stock Companies and Firms (RJSC). Subsidiaries are allowed to remit dividends declared on after tax profits.

Joint ventures

As with wholly owned subsidiaries, foreign companies may incorporate joint venture companies with Bangladeshi partners. The equity ownership of the foreign company will depend on the sector being invested in.

Branch or Liaison offices

Foreign companies can also set up a presence in Bangladesh through a representative office, liaison office or branches. Usually foreign companies that do not have local earnings in Bangladesh may choose to set up representative, liaison offices or branches. The activities of these entities are restricted to those set forth in their approvals from the BIDA and they are required to adhere to the foreign exchange regulations stringently. Generally, no outward remittance of any kind from Bangladesh is allowed unless specifically permitted by the foreign exchange regulations or Bangladesh Bank. Such offices are required to bring inward remittance at least USD 50,000 within two months from the date of setup as establishment cost. One of the required approvals for setting up is that security clearance has to be obtained from the Ministry of Home Affairs, Government of Bangladesh.

Participate in an existing Bangladeshi company by purchasing shares

Foreign investors are free to invest in local companies in Bangladesh unless specifically prohibited (as mentioned above). Shares may also be issued to foreign investors against capital machinery brought into Bangladesh by them (subject to confirmation by the Customs and Excise authority of the import documents).

Tax consideration

Taxes in Bangladesh can be broadly classified into direct and indirect taxes. Direct taxes usually cover income tax and corporate tax. The key taxes to be aware of are summarized below.

Corporate tax

The tax year runs from July 1 to June 30. Recently, the Finance Act 2017 of Bangladesh has brought significant changes to the tax regime of Bangladesh. The current rate of taxation for publicly traded companies stands at 25% and 35% for non-publicly traded companies (save for certain industries such as telecom, banking, and cigarette manufacturers).

An entity incorporated in Bangladesh or having its entire management and control in Bangladesh is a resident and is taxed on its worldwide income. A non-resident corporation (foreign company) is taxed only on income received or deemed to be received in Bangladesh from operations in Bangladesh, or income that is accruing or arising in Bangladesh or deemed to accrue or arise in Bangladesh.

Personal income tax

Personal income tax is levied on capital gains and income sourced from dividends. Generally, personal income tax ranges from 10% to 35% depending on the taxable income. However, rates also vary depending on what age a person is and also whether they are male or female. Please note that non-residents are taxed at a flat rate of 30% on its personal income. Specialized tax advice should always be sought to determine personal income tax liability in Bangladesh.

Withholding tax

Withholding tax is payable on certain payments, including dividends, royalties, interest, salaries paid to employees, professional or technical service fees, payments

to contractors, commissions, workers participation fund, consideration for transfer of immovable property etc. Responsibility for the deduction of withholding tax is fixed on the person responsible for making the payment. The rate of withholding tax applicable to non-residents varies depending on the nature of the income.

Value added tax

Value added tax (VAT) on sales was introduced in 1991 in Bangladesh. While internationally VAT is implemented as such that it replaces all indirect taxes except customs duty, in Bangladesh, VAT replaces local sales tax only. Generally, rate of VAT in relation taxable import or supply is 15% unless stated otherwise in the law. VAT rate typically ranges from 10% to 35% depending on the nature of services, and in relation to goods, the range is from 20% to 35%. In 2015, the VAT exemption ceiling was raised to BDT 3 million and cancelled VAT for commodities related to people's basic needs, such as, unprocessed agricultural products, life-saving drugs and public health and medical services. Recently, a proposal was submitted by the Finance Minister in the 2017-2018 budget to set a single uniform flat VAT rate of 15%. However, this was delayed until the next election that may be held in late 2018.

Stamp duty

The rate of stamp duty payable in Bangladesh is governed under specific legislation and regulations adopted by the Government of Bangladesh and are amended from time to time. The duty is payable on a transfer instrument related to property, such as sale, lease or mortgage or even in creating or assigning any type of right. The stamp duty is therefore a non-recurring one-time payment and is normally paid by the purchaser/lessee/mortgagee of a property unless the agreement provides to the contrary.

Incentives offered to foreign investors

Bangladesh is keen to stimulate the economy and transform the poverty-stricken economy into a developed one within a short time. Government's policy on investment offers lucrative incentive packages to attract foreign investment. These incentives are updated on a yearly basis and new incentives are also declared. These facilities are subject to some conditions and provided by the BIDA. In addition, Bangladesh offers citizenship, permanent residency and multiple entry visas for the foreign investors.

Tax Holiday Facility (THF)

Tax holiday is allowed to industries subject to the relevant rules and procedures set by the National board of Revenue of Bangladesh (NBR). This may vary from 3-7 years depending on the location of the establishment. For instance, industries located in Dhaka and Chittagong Divisions (excluding three Hill Tract districts of Chittagong Division) are exempted for five years. This tax holiday scheme, which was scheduled to end in 2015, was extended until June 2019 to create an investor friendly atmosphere in Bangladesh. Tax holiday facilities are also available to industrial units and developers of economic zones for a term of 10 years and 12 years respectively.

Tax exemption

Tax exemptions are usually allowed in respect of the following cases:

- on royalties, technical know-how fees received by any foreign collaborator, firm, company and expert;
- on income tax up to three years for foreign technicians employed in industries specified in the relevant schedule of the income tax ordinance;
- on income of the private company undertaking physical infrastructure projects;
- on capital gains from the transfer of shares of public limited companies listed with a stock exchange;
- NGO registered with the NGO Affairs Bureau; and
- income of the companies in certain other sectors identified in the income tax ordinance.

Depreciation allowance

Allowance for depreciation is permitted in relation to any building, machinery, plant, furniture, bridge, road or flyover used in any business or industrial undertaking while calculating profit or gains. The third schedule of the Income Tax Ordinance 1984 provides a list of different class of assets and its applicable depreciation allowance rate that typically varies from 10% to 30% of the cost. The schedule also provides a breakdown of normal depreciation allowance rate, initial depreciation allowance rate and accelerated depreciation allowance rate for different class of assets.

Avoidance of double taxation

For foreign investors, double taxation can be avoided on the basis of Bilateral Double Taxation Avoidance Treaties (DTTs). NBR is entrusted to negotiate Double Taxation Agreements (DTA) with foreign countries to promote FDI in Bangladesh. The DTA is an agreement between two countries seeking to avoid double taxation by defining the taxing rights of each country with regard to cross-border flows of income and providing for tax credits or exemptions to eliminate double taxation. It also provides exchange of information between treaty partners regarding evasion of tax. For instance, Bangladesh has double taxation treaties with Belgium, Canada, China, Denmark, France, Germany, India, Italy, Japan, Poland, Romania, Singapore, South Korea, Sri Lanka, Sweden, Thailand, The Netherlands, The United Kingdom and other countries.

Remittance

Remittance of profits of branches of foreign firms/companies, dividends/capital gains, salaries and savings by expatriates, royalty and technical fees, training and consultancy fees, receivables collected by shipping companies and airlines towards freight and passage can be effected through authorized dealers without prior approval of the Bangladesh Bank. Foreign entrepreneurs are, therefore, entitled to the same facilities as domestic entrepreneurs with respect to tax holiday, payment of royalty, technical know-how fees etc.

Repatriation

Full repatriation of capital invested from foreign sources is allowed. Similarly, profits and dividends accruing to foreign investment may be transferred in full. If foreign investors reinvest their repatriable dividends and/or retained earnings, those will be treated as new investment. Foreigners employed in Bangladesh are entitled to remit up to 75% of their salary and will enjoy facilities for full repatriation of their savings and retirement benefits. To avail full repatriation of invested capital, profit and dividend, foreign investors would need to apply for repatriation approval from the Bangladesh Bank through a nominated bank.

Exit

An investor can wind up an investment either through a decision of an annual or extraordinary general meeting. Once a foreign investor completes the formalities to leave the country, he or she can repatriate the net proceeds after securing proper authorization from the central bank (Bangladesh Bank).

Land rights

The legal principles surrounding land ownership in Bangladesh are governed by specific legislation and the Government, from time to time, make changes to confer better land rights to citizens. Any dispute in relation to land rights are resolved by the courts which is time consuming due to the archaic nature of the Bangladesh courts.

Types of land right

In Bangladesh real estate may be held as an owner with freehold right, as a lessee with leasehold rights or as a licensee with mere right to use.

- **Freehold right** – The landlord of the property enjoys absolute right, title and interest in the property. Freehold right may be acquired by way of inheritance, gift, will or purchase. The landlord can deal with the property in the way he/she desires.
- **Leasehold right** – A person enjoying freehold rights may lease the property along with certain rights, as per agreed terms and conditions, and for a stipulated period, against some consideration to another person to use the property strictly as per the agreed terms and for a specified purpose only.
- **License** – A license is a right to do or continues to do, in or upon the immovable property of the landlord, something which would in the absence of such right be unlawful, and such right does not amount to an easement or an interest in the property. A mere license does not create an interest in property to which it relates.

In Bangladesh the majority of immovable properties are freehold, whereas few residential, commercial and industrial properties are leasehold. Foreign persons or entities are not allowed to own real property in Bangladesh. However, certain structures allow foreigners to have ownership rights to real property. Foreigners may incorporate a local company with 100% foreign ownership and have that foreign-

owned local company own property. Foreigners can establish joint-venture companies in Bangladesh that can own real property or shares of a local company that owns real property. Foreigners may also lease land in certain specialized areas such as export processing zones (EPZs).

Land registration

All transfer of properties are required to be in writing with the exception of a transfer of an actionable claim, and transfers require registration in order to be considered valid. Registration completes the transfer, but the title created by the registered instrument relates back to the date of transfer document execution. Although a transfer of property may be executed with due solemnity and may be proved to the satisfaction of a Court by the evidence of attesters, the transferee may not acquire the interest which the deed of transfer purports to confer on him. The title acquired by the transferee may be overridden or qualified by the prior rights of third parties. Hence, a proper system of registration that can facilitate proof of title to landed property is needed.

Secured transactions involving real property

Real property may be secured by way of mortgage, which is regulated by specific laws. The landowner executes a deed of mortgage, and that deed has to be registered with the local land registry office pursuant to the provisions of registration laws. Stamp duty is also required to be paid on an ad-valorem basis on the value of the mortgage. It is also common practice to provide a registered power of attorney in favor of the mortgagee, along with the registered mortgage deed. All indentures relating to such rights to the land have to be registered with the local land registry. There is also a common practice of depositing the original title deeds as an informal security.

Commercial leasing

Conducting a title verification to ascertain any material or title defects with regard to proposed lease premises is a primary step in any leasing transaction. Once the title clearance is obtained, the terms of the lease have to be arrived at based on commercial understanding between parties. However, due consideration has to be provided while negotiating 'rent free period', 'sole renewal option for lessee', 'lock-in period', 'force majeure' and 'termination' clauses. In addition, certain representations and covenants from the lessor have to be obtained in relation to title, ownership and

authority to lease; uninterrupted and peaceful possession; legality of construction and contemplated usage on the property; encumbrances, liens, third-party claims; uninterrupted supply of electricity and water; and refund of security deposit.

Opportunities

As the economic landscape in Bangladesh is changing and developing rapidly, there exist opportunities in the real estate sector abound. In the residential market, there are tremendous opportunities for international companies to come in and consolidate, as the entire market is fragmented. As the young, urban middle class grows, there will be further demand for housing. In addition, the legal framework is still conducive for foreign investment in this sector. Although there are restrictions in terms of convertibility of currency, foreign exchange laws allow for repatriation of profits and capital.

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**DFDL collaborating firm*

About DFDL

DFDL was established in 1994 and built on a unique vision: to create an integrated legal, tax and investment advisory firm, with in-depth knowledge of the jurisdictions we work in, providing technical excellence across our core areas of expertise.

Over twenty years later, DFDL continues to build on its reputation as the obvious first-choice firm for sophisticated transactions in frontier markets across Asia and beyond.

As these markets continue to expand and thrive, so has DFDL and we are now uniquely positioned to help clients access investment opportunities in the world's most dynamic region.

With a diverse complement of over 140 local and foreign lawyers and advisers working within Asia, we provide versatile tax and legal services in a language that you understand. These services include:

- Banking and Finance
- Corporate, Mergers and Acquisitions
- Employment
- Energy, Mining and Infrastructure
- Real Estate and Construction
- Taxation

Since its foundation, DFDL has acquired an outstanding reputation for providing integrated and solution-oriented legal and tax services to establish, structure and protect our clients' business interests in dynamic and challenging markets. DFDL is also actively involved in developing the legal and regulatory environments of the frontier markets in which we operate.



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