BANGLADESH FOREIGN INVESTMENT GUIDE

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DFDL

Contents

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DFDL
BANGLADESH

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 7% per year. With nearly 172 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 2021, Bangladesh progressed from a lower income country to a lower-middle income country. By 2026, Bangladesh aspires to be a 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 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 25th largest economy in the world in 2023 in purchasing power parity terms, and 35th 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 7% per year on average since 2015 despite frequent natural disasters, political instability, poor infrastructure, and slow implementation of economic reforms and the recent Pandemic. 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);
- economic zone (EZ); and
- export processing zone (EPZ).

Bangladesh offers the most liberal foreign direct investment 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 and foreign 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 sectors) and there are also no restrictions on ownership of land by 100% foreign owned companies.

Foreign exchange control regime

Bangladesh has a very strict foreign exchange control regime in force and the principal legislation in this regard are the Foreign Exchange Regulations Act, 1947 and the Guidelines for Foreign Exchange Transactions 2009 (amended in 2018), promulgated and enforced by Bangladesh Bank. Dealing in foreign currency is restricted and only certain licensed bank branches are allowed to remit foreign currency outside Bangladesh and no other person may deal in foreign exchange without prior consent of the Bangladesh Bank. Also, remittance of money outside Bangladesh is allowed only for specific circumstances and is required to be supported by appropriate documentation.

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)

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 assistance 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 readymade garments, construction, information technology, telecommunication, 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. Joint venture companies are common in regulated sectors. The equity ownership of the foreign company will depend on the sector being invested in.

Branch, Liaison or Project offices

Foreign companies can also set up a presence in Bangladesh through a liaison office, branch, or a project office for a period of 10 years. Usually, foreign companies that do not have local earnings in Bangladesh may choose to set up liaison offices, project 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 or BIDA. Such offices are required to bring inward remittance of 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 and the National Security Agency.

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 and compliance with requirements of the RJSC (i.e., companies' repository)). Further cross-border transfer of shares is subject to certain fair-market valuation (FMV) and pre-approval from or post-transfer notification to Bangladesh Bank.

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 Income Tax Act 2023 and the Finance Act 2023 of Bangladesh has brought significant changes to the tax regime of Bangladesh. The current rate of taxation for publicly traded companies stands at 20% (Conditional) and 27.5%

(conditional) 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 5% to 25% 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 their 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.

Recently, the old legislation has been replaced by new law, namely, the Value Added Tax and Supplementary Duty Act 2012. While internationally VAT is implemented as such that it replaces all indirect taxes except customs duty, in Bangladesh, VAT replaces the local sales tax only. Generally, the rate of VAT in relation to taxable import or supply is 15% unless stated otherwise in the law. VAT rate typically ranges from 5% to 15% depending on the nature of goods or services. Further, businesses exceeding annual turnover of BDT 30 million are mandatorily required to obtain VAT registration and regular submission of VAT return on a monthly basis. However, there are some relaxations of VAT over certain commodities related to people's basic needs, such as, unprocessed agricultural products, life-saving drugs, public health, and medical services.

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 or transfer of shares. Therefore, stamp duty is 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. The 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 BIDA. In addition, Bangladesh offers multiple entry visas for the foreign investors and work permits. The government is promoting EZs and EPZs and to attract foreign investment into these zones the government is offering incentives like tax holidays.

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). Generally, this may vary from 5-7 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 was further extended 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 classes 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, Indonesia, Italy, Japan, Malaysia, Myanmar, Poland, Philippines, Romania, Singapore, Switzerland, South Korea, Sri Lanka, Sweden, Turkey, Thailand, The Netherlands, The United States of America, The United Kingdom, Vietnam 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 affected 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 holidays, 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 investments. Foreigners employed in Bangladesh are entitled to remit up to 100% of their salary (post income tax) 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 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 EZs and EPZs.

Land registration

All transfer of properties is 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 regards 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

Leaders in Southeast and South Asia

DFDL was established in 1994 and founded on a unique vision: to create an integrated legal and tax advisory firm, with in-depth knowledge of the developing jurisdictions in which we are based. Our dedicated professionals exhibit the acumen and insight necessary to assist you in navigating the legal and tax complexities and challenges. Drawing on a wide-ranging industry experience and finely tuned local knowledge in the countries we operate in, we strive to provide concise, commercially focused, and innovative advice, staying true to our original motto One Region. One Firm.

DFDL has 12 offices including collaborating firms, in Bangladesh, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.

Our Solutions

We are constantly adapting in fast-changing environments. As a full-service and fully integrated legal and tax firm, we remain focused on our fundamental mission: to bring you successful solutions and add value to your projects across Southeast and South Asia. We are committed to our clients' success and to providing them with commercially focused legal solutions that help them overcome their business challenges.

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