

Doing business in Bangladesh: overview

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A Q&A guide to doing business in Bangladesh.

This Q&A gives an overview of key recent developments affecting doing business in Bangladesh as well as an introduction to the legal system; foreign investment, including restrictions, currency regulations and incentives; and business vehicles and their relevant restrictions and liabilities. The article also summarises the laws regulating employment relationships, including redundancies and mass layoffs, and provides short overviews on competition law; data protection; and product liability and safety. In addition, there are comprehensive summaries on taxation and tax residency; and intellectual property rights over patents, trade marks, registered and unregistered designs.

To compare answers across multiple jurisdictions, visit the *Doing business in... Country Q&A Tool*.

This article is part of the multi-jurisdictional guide to doing business worldwide. For a full list of contents, please visit www.practicallaw.com/dbi-guide.

Overview

Legal system

Foreign investment

Business vehicles

Employment

- Laws, contracts and permits

- Termination and redundancy

Tax

- Taxes on employment

- Business vehicles

- Dividends, interest and IP royalties

- Groups, affiliates and related parties

- Customs duties

- Double tax treaties

Competition

Intellectual property

Marketing agreements

E-commerce

[Advertising](#)

[Data protection](#)

[Product liability](#)

[Main business organisations](#)

[Board of Investment \(BIDA\)](#)

[Registrar of Joint Stock Companies \(RJSC\)](#)

[Bangladesh Bank \(BB\)](#)

[National Board of Revenue \(NBR\)](#)

[Chief Controller of Import & Export](#)

[Online resources](#)

[Laws of Bangladesh](#)

[Contributor profiles](#)

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[Anupam Chokroborty, Head of Chittagong Chamber](#)

Overview

1. What are the key recent developments affecting doing business in your jurisdiction?

Bangladesh is an emerging economy in South Asia. Between 2015 and 2016 annual exports reached US\$34.5 billion, mainly from knitwear and garment products. Remittances also reached US\$15 billion, maintaining a growth of gross domestic product (GDP) of over 6% in recent years.

Bangladesh has limited mineral resources and heavily relies on its land and labour to drive its economic growth. Bangladesh possesses a stable credit rating in all of the following:

- Standard and Poor's (S&P) (rating of BB-).
- Moody's (rating of Ba3).
- Fitch ratings (rating of BB-).

The Government of Bangladesh is driving rapid developments in the country's infrastructure sector, particularly with regard to power, ports and mass communication. Following the enactment of the Public-Private Partnership Act (PPP Act) in 2015, the government is now encouraging various infrastructure development programmes under a public-private partnership model. This is to try and encourage value and return based on local and foreign investment in developing local infrastructure.

The government is also currently allowing private investment in developing economic zones to harness both local and foreign investment in the industrial sector.

Legal system

2. What is the legal system based on (for example, civil law, common law or a mixture of both)?

Most legislation originates from English law and the legal system is based on English common law. The judicial system largely follows the adversarial model and legislation is enacted centrally by state legislatures.

Foreign investment

3. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

Private sector investment is prohibited for certain sectors including:

- Arms and ammunition.
- Defence equipment.
- Forest plantation.
- Extraction of reserved forests.
- Nuclear energy.
- Security printing.
- Minting.

There is no restriction in general on foreign investment except in sectors controlled by administrative licensing processes. These include:

- Banking.

- Finance.
- Insurance.
- Merchant banking and brokerage.
- Telecommunication.
- Aviation.
- Broadcasting.

The following protections are afforded to foreign direct investment (FDI) under the Foreign Private Investment (Promotion and Protection) Act 1980:

- The terms of sanction, permission or licence granted to an FDI industry will not be unilaterally changed so as to adversely alter the conditions under which the establishment of such undertaking was sanctioned.
- In the event of losses of foreign investment due to civil commotion, insurrection, or riot, foreign private investment will be accorded the same treatment with regard to indemnification, compensation, restitution, or other settlement as is accorded to investments by the citizens of Bangladesh.
- Foreign private investment will not be expropriated or nationalised or be subject to any measures having a similar effect. This is except for a public purpose against adequate compensation which will be paid expeditiously and be freely repatriated.
- The repatriation of capital and the returns from foreign investment and, in the event of liquidation of industrial undertaking having such investment, of the proceeds from such liquidation is guaranteed.

4. Are there any restrictions on doing business with certain countries or jurisdictions?

There is no general restriction on doing business with certain countries or jurisdictions. However, the Chief Controller of Import and Export (CCIE) amends the import and export policies, addendums and Statutory Regulatory Orders (SROs) regularly, to prohibit or impose limits on import and export of certain commodities from or to certain countries for certain periods of time. The Anti-Terrorism Act 2009 recognises the resolutions passed by the UN Security Council.

5. Are there any exchange control or currency regulations?

Bangladesh operates an exchange controlled economy under the Foreign Exchange Regulation Act 1947 (FERA). All inward and outward remittances are regulated by the central bank of Bangladesh (that is, the Bangladesh Bank) (FERA).

Foreign investor rights are protected under the Foreign Private Investment (Promotion and Protection) Act 1980. The Bangladesh Bank has outlined relevant procedures and formalities for all inward and outward remittance in its Guidelines for Foreign Exchange Transactions (GFET). The GFET covers the procedure for, among others:

- Foreign dealings in securities.
- Foreign lending.
- Technical assistance fees.
- Foreign ownership.
- Mergers and acquisitions.
- Divestments.

Any transaction that has not been outlined in the GFET must obtain approval from the Bangladesh Bank.

6. What grants or incentives are available to investors?

Tax holidays. Tax holidays are allowed for industrial undertakings and physical infrastructure facilities established between 1 July 2011 and 30 June 2019 in the thrust sector. The thrust sector refers to industries/industrial sub-sectors that have been able to successfully contribute to the country's industrialisation. In Bangladesh it is based on developed and underdeveloped areas (*see below*). Industries set up in Export Processing Zones (EPZs) are also eligible for tax holidays.

Some examples of thrust industrial sectors that are subject to tax exemption include:

- Radio pharmaceuticals.
- Automobile manufacturing.
- Barrier contraceptives.
- Rubber latex.
- Chemicals or dyes.
- Computer hardware.
- Energy efficient appliances.
- Petro-chemicals.

Examples of physical infrastructures subject to exemption include:

- Deep sea ports.
- Hi-tech Park.
- Elevated expressways.
- Flyovers.
- Waste treatment plants.

The tax exemptions are shown as follows:

- **Thrust Industries (for developed areas, which includes Dhaka and Chittagong divisions, excluding Dhaka city, Narayanganj, Gazipur, Chittagong city, Rangamati, Bandarban and Khagrachari districts):**
 - first year: 100%.
 - second year: 100%.
 - third year: 60%.
 - fourth year: 40%.
 - fifth year: 20%.
- **Thrust Industries (for undeveloped areas, which includes Rajshahi, Khulna, Sylhet and Brisal divisions and Rangamati, Bandarban and Khagrachari districts):**
 - first year: 100%.
 - second year: 100%.
 - third year: 70%.
 - fourth year: 55%.
 - fifth year: 40%.
 - sixth year: 25%.
 - seventh year: 10%.
- **Physical infrastructure:**
 - first year: 100%.
 - second year: 100%.
 - third year: 80%.

- fourth year: 70%.
- fifth year: 60%.
- sixth year: 50%.
- seventh year: 40%.
- eighth year: 30%.
- ninth year: 20%.
- tenth year: 10%.

- **Industries set up in an EPZ (Dhaka and Chittagong Division (excluding the hill districts):**
 - first year: 100%.
 - second year: 100%.
 - third year: 50%.
 - fourth year: 50%.
 - fifth year: 25%.

- **Industries set up in an EPZ (other areas):**
 - first year: 100%.
 - second year: 100%.
 - third year: 100%.
 - fourth year: 50%.
 - fifth year: 50%.
 - sixth year: 50%.
 - seventh year: 25%.

- **Developers of the Bangladesh Economic Zones Authority (BEZA) and the Hi-tech Park:**
 - first year: 100%.
 - second year: 100%.
 - third year: 100%.
 - fourth year: 100%.
 - fifth year: 100%.
 - sixth year: 100%.

- seventh year: 100%.
 - eight year: 100%.
 - ninth year: 100%.
 - tenth year: 100%.
 - eleventh year: 70%.
 - twelfth year: 30%.
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- **Industries involved in BEZA and the Hi-Tech park:**
 - first year: 100%.
 - second year: 100%.
 - third year: 100%.
 - fourth year: 80%.
 - fifth year: 70%.
 - sixth year: 60%.
 - seventh year: 50%.
 - eight year: 40%.
 - ninth year: 30%.
 - tenth year: 30%.

In addition to the above, manufacturing industries that have commenced their commercial operations between 1 July 2014 and 30 June 2019 located outside any city corporation area are eligible to a tax exemption of up to 20% for the ten year period following the commencement of production (COD).

For independent power plants (IPPs) COD after 1 January 2015 (other than coal fired IPPs) there is a:

- 100% tax exemption during the first five years.
- 50% exemption during the next three years.
- 25% exemption during the next two years.

For coal fired IPPs contracting with the government before 30 June 2020 and achieving COD before 30 June 2023, there is a 100% tax exemption for the first 15 years. For power projects no import duty is charged with regard to capital machinery and spares.

Other exemptions include the following:

- **Accelerated depreciation.** Industrial undertakings not enjoying a tax holiday benefit from an accelerated depreciation allowance.
- **Concessionary duty on imported capital machinery.** Import duty, at the rate of 3%, is payable on the value of capital machinery and spares imported for initial installation in the existing industries.
- **Incentives to export oriented industries.** These include:
 - businesses exporting 80% or more of goods or services qualify for duty free import of capital machinery and spares, and bonded warehousing;
 - bonded warehouse and back-to-back letter of credit facilities;
 - 90% loans against letters of credit and funds for export promotion;
 - they are allowed domestic market sales of up to 20%;
 - cash incentives and export subsidies are granted on the free on board value (this includes inland freight, export duty and other expenses, but not ocean freight, insurance and consular fees) in the form of drawbacks and rebates on import and excise duties paid on direct inputs and so on;
 - for 100% export oriented industries, no import duty is charged on raw materials.
- **Incentives to foreign investors.** These include:
 - 100% foreign ownership and repatriation of invested capital, profit, and dividends;
 - re-investment of repatriable dividends as new investment;
 - royalties and technical know-how fees are tax exempted for thrust sectors (*see above, Tax holidays*);
 - interest on foreign loans is tax exempted under certain conditions;
 - double taxation can be avoided;
 - foreign technicians in certain industries are exempted from tax for up to three years;
 - private sector power generation companies are tax exempted for 15 years;
 - capital gains from the transfer of shares of public limited companies are tax exempted;
 - new investors are granted six month multiple entry visas;
 - citizenship by investing US\$500,000 or by transferring US\$1 million (non-repatriable);
 - permanent residency by investing US\$75,000 (non-repatriable).

Business vehicles

7. What are the most common forms of business vehicle used in your jurisdiction?

The main business vehicles used include the following:

- Proprietorship.
- Partnership.
- Limited liability company (public and private limited).
- Branch office (foreign company).
- Liaison office.
- Societies.
- Associations (not for profit).

A trust can be created under the Trusts Act 1882 for any lawful purpose and is seldom used as a business vehicle other than as a tax planning instrument.

Limited companies (private limited and public limited), branch and liaison offices are most commonly used due to their:

- Limited liability nature.
- Flexible corporate structure.
- Well defined governance framework.

Branches of foreign companies are only allowed in commercial service sectors. Functions of liaison offices are further limited to local liaison, facilitation of sales, marketing, research and exhibition. Liaison offices cannot generate revenue or perform commercial activities.

8. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, what are the main registration and reporting requirements?

Registration and formation

Companies. A minimum of two promoters are required to incorporate a private limited company. The following procedure applies:

- The promoters enter a resolution proposing a unique name.
- On the Registrar of Joint Stock Companies' (RJSC) clearance of the name, foreign capital contribution must be remitted to obtain an encashment certificate from local banks.
- The following must be filed with the RJSC:
 - bank encashment letter;
 - proposed memorandum of association (MoA);
 - articles of association (AoA);
 - director details (minimum two);
 - relevant forms (that is, Form-IX, X and VI) and fees.

If the proposed number of shareholders is over 50, then a public limited company must be set up and must have at least seven shareholders and three directors. In addition, companies having a paid-up capital of BDT400 million must be incorporated as or converted into a public limited company. Companies having a paid-up capital of BDT500 million must be listed in the local stock exchange. However, these compulsory conversions are exempted for foreign investment and joint venture companies.

Branch and liaison offices. Before registering with the RJSC by filing the parent company's MoA and AoA, director details and relevant forms, branches of foreign companies must get prior permission from Bangladesh Investment Development Authority (BIDA). Prior permission is obtained by filing:

- Certificate of incorporation.
- MoA and AoA.
- Resolutions of the parent.
- Director details.
- Three years' audited accounts.
- Proposed organogram.

Liaison offices require identical permission from the BIDA by filing the same documents. However, they do not need to register with the RJSC.

It can take three weeks for a company to be registered and one month for a branch or liaison office to be registered.

Additionally required licences include:

- Trade licence.
- Tax identification number.
- VAT registration.

- Registration with the chief inspector of factories and establishment (CIFE).
- Import and export registration certificates (IRC/ERC) (applicable for industries).
- Factory registration (applicable for industries).
- Fire license (applicable for industries).
- Electricity and environmental registration (applicable for industries).

Reporting requirements

Companies and branches of foreign companies are subject to the following reporting requirements, within 30 days from the date of their annual general meeting (AGM):

- Annual return and particulars of directors (Schedule-X and Form-XII).
- Audited accounts (profit/loss or income/expenditure statement and balance sheet).

Branch and liaison offices must file quarterly statements of accounts to the BIDA, National Board of Revenue and Bangladesh Bank.

Other statutory returns for all of the entities include annual tax returns, bi-annual withholding tax returns and monthly VAT returns.

Share capital

Companies do not have any minimum capital requirements unless they appoint any expatriate as an employee. In this case, the minimum capital requirement is US\$50,000.

Branch and liaison offices must bring US\$50,000 within one month from their incorporation.

Non-cash consideration

Non-cash consideration includes in kind contributions such as capital machinery, real assets' land, goodwill, and contract receivables in industrial undertakings. However, for foreign investors only capital machinery is allowed as an in-kind contribution (other than cash). For such a contribution, the project must first be registered with the BIDA after incorporation. Permission must then be sought from the BIDA for the non-cash consideration in form of capital machinery for the shareholding. This is followed CCIE approval for relevant import of capital machinery.

Rights attaching to shares

Restrictions on rights attaching to shares. Parties can contractually restrict rights attached to shares by a shareholders' agreement, subject to the Companies Act 1994. These restrictions must be incorporated into the company's AoA to bind the company. Companies can issue shares with differential rights in relation to dividends, voting or otherwise.

Automatic rights attaching to shares. Shareholders have the right to:

- Vote to elect a director and in shareholder meetings.
- Receive dividends.
- Apply to court for winding up.
- Seek relief in the case of mismanagement.

9. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, outline the management structure and key liability issues.

Management structure

A company is managed by its board of directors. There must be at least two directors in a private limited company and three directors in a public limited company. Board meetings must be held once in each quarter. The shareholders appoint one managing director for a five-year term. The shareholders must attend the AGM. There are no residency requirements for directors and no restriction on control by foreign directors.

Management restrictions

Certain decisions must be approved by the shareholders in a general meeting, such as:

- Election and removal of directors.
- Appointment of auditors.
- Investment in associated entities.
- Alteration of MoA/AoA.
- Increase in share capital.
- Dividend declaration.
- Any restriction stipulated in the AoA.

Directors' and officers' liability

A director who commits a breach of fiduciary duty is liable for both civil and criminal consequences. A director is also liable for monetary penalties and/or imprisonment for breaches of statutory provisions, unless it can be proved that either:

- The breach was committed without his knowledge.

- He had exercised all due diligence to prevent the commission of the breach.

Directors of a bankrupt company are punishable with up to two years' imprisonment and fine if, within 48 months immediately before the filing of bankruptcy, they incur any debt without reasonable expectation of being able to repay that debt (*Bankruptcy Act 1997*).

Parent company liability

Parent company liabilities are limited to the extent of its shareholding in the company, unless otherwise agreed in the AoA or shareholders' agreement. Parent companies acting as shadow directors are liable as a director. Lifting the corporate veil is permitted if the company was formed to perform a fraud.

Employment

Laws, contracts and permits

10. What are the main laws regulating employment relationships?

The Labour Act 2006 is the main law regulating the employment of "workers". It excludes from its scope persons employed mainly in a managerial or administrative capacity from the definition of workers. However, case law has decided that employees that have no hiring or firing power must be considered as workers under the act.

The Labour Act 2006 is equally applicable to local and foreign employees, and its provisions apply regardless of any choice of law in the employment contract. Excluded employee relations are governed by individual contractual terms and conditions.

The EPZ workers Association and Industrial Relations Act 2010 applies to the companies situated within the EPZs. The International Labour Organisation Conventions also apply.

11. Is a written contract of employment required? If so, what main terms must be included in it? Do any implied terms and/or collective agreements apply to the employment relationship?

A letter of appointment is mandatory (*Labour Act 2006*). In the absence of a written contract, the letter of appointment is considered as a contract read with the obligatory terms of the Labour Act 2006. The terms of the

contract (written or verbal), as long as they are not less favourable than the Labour Act 2006, are considered valid and binding.

It is common practice for employers to execute written contracts with their employees, which include:

- Working hours.
- Salary.
- Designation.
- Nature of work.
- Leave and holidays.
- Termination procedure.

If there is an agreement with the collective bargaining agent, then that agreement applies to any employee who is a member of any trade organisation in the specific company or industry.

12. Do foreign employees require work permits and/or residency permits?

Business and investor visa

Promoters and investors are entitled to a Private Investor (PI) or Business (B) visa to establish business or explore business possibilities and activities. A PI/B visa with a multiple entry facility can be granted for up to two years on recommendations issued by the Bangladesh Investment Development Authority (BIDA).

E-visa and work permit

Expatriates must have a work permit to work in Bangladesh, with separate residency permits required for family members. The following conditions apply in relation to issuing a work permit:

- Nationals of countries recognised by Bangladesh are considered for employment (that is, only nationals of those countries are able to apply for a work permit).
- Employment must be in establishments registered by the appropriate authority (that is, the RJSC and/or the BIDA).
- Local experts/technicians are not available.
- Persons below 18 years of age are not eligible for a work permit.
- The number of expatriates should not exceed 5% in the industrial sector and 20% in the commercial sector.
- The initial work permit is for two years, extendable on a case by case basis.

- Security clearance is required from the Ministry of Home Affairs.

To obtain a work permit, an application is filed with the BIDA for an e-visa recommendation. On receipt of the recommendation, the Bangladesh Embassy provides the employee with an e-visa that is valid for three months. On arrival in Bangladesh, the employee must apply to the BIDA for the work permit. The applications are filed by the employer and the application stage takes about two weeks.

The following documents must be filed:

- Copy of the employer's incorporation certificate with the MoA and AoA/permission letter.
- Board resolution for the employment, mentioning salary and benefits.
- Passport size photographs and passport copy.
- Service contract/agreement or appointment letter/transfer order.
- Certificates of all academic qualification and professional experience.
- Copy of advertisement made for local recruitment before appointment of the expatriate.
- Specific activities of the company and statement of manpower, showing a list of local and expatriate personnel employed with designation, salary break-up, nationality and date of first appointment.
- Encashment certificate of inward remittance of a minimum of US\$50,000.

Termination and redundancy

13. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

Unless there is a collective bargaining agent or an employee participation committee (EPC), employees are not entitled to management representation and/or to be consulted in relation to corporate transactions. Employees are entitled to have an EPC if there are 50 or more employees.

14. How is the termination of individual employment contracts regulated?

Discretionary termination

To terminate permanent employment, the:

- Employer must give 120 days' notice.
- Employee must give 60 days' notice.

For temporary workers, either side must give 30 days' notice.

- For such voluntary termination a permanent employee must receive:
- Payment that equates to 30 days' wages for every completed year of service (for employment of less than ten years').

This is in addition to any other benefit to which they may be entitled under the Labour Act. Such compensation is also payable to workers on retirement or resignation.

Disciplinary termination

Summary dismissal (that is, without notice) is permitted only for convictions of a criminal offence. For other disciplinary grounds (*see below*), the employee has seven days to justify his misconduct. If his reply is unsatisfactory, the employer must call a hearing to decide whether he should be dismissed on disciplinary grounds. The following disciplinary grounds apply:

- Wilful insubordination or failure to obey.
- Theft, fraud or dishonesty in connection with the employer's business or property.
- Taking or giving a bribe.
- Habitual late attendance.
- Habitual breach of any law, rule or regulation.
- Riotous or disorderly behaviour, or any act subversive of discipline.
- Habitual negligent work.
- Habitual breach of any rule of employment.
- Falsifying, tampering with, damaging, or causing loss of the employer's official records.

A severance payment is payable for disciplinary termination (other than due to conviction for a criminal offence or theft, fraud or riotous or disorderly behaviour, including arson and vandalism). The severance payment is equal to 15 days' pay for each completed year of employment.

An employee can serve a notice of grievance within 15 days from the date of the decision. On receipt of the grievance, the company must arrange another hearing conducted by superior management. The employee can then go to the Labour Tribunal.

15. Are redundancies and mass layoffs regulated?

Layoff

Layoffs are permitted in the case of shortage of coal, power or raw materials, accumulation of stock or breakdown of machinery. An employee working for at least one year is entitled to an amount equivalent to half of the total of his basic monthly wages for each of the completed years during the tenure of his employment, plus any other benefits, including dearness allowance.

Redundancy termination (retrenchment)

Redundancy termination is permitted if due notice of justification is provided to the CIFE. Employees must be given 30 days' notice. Employees from a particular category of worker must be retrenched on a "last in first out" basis, with a provision relating to reappointment to new openings in future.

Employees with:

- One to ten years' service are entitled to compensation equivalent to 30 days' wages per year of service.
- Over ten years' service are entitled to 45 days' wages per year of service.

Tax

Taxes on employment

16. In what circumstances is an employee taxed in your jurisdiction and what criteria are used?

Irrespective of residency status any income which is received or accrued in Bangladesh is taxable in Bangladesh. Tax resident employees must pay tax on their local and worldwide income.

An employee is considered to be a tax resident of Bangladesh if he has both:

- Been in Bangladesh for a period of (or for periods amounting to):

- 182 days or more in the relevant year;
 - 90 days or more in the relevant tax year.
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- Been in Bangladesh for a period of (or periods amounting to), 365 days or more during the four years preceding the relevant tax year.

17. What income tax and social security contributions must be paid by the employee and the employer during the employment relationship?

Tax resident employees

Employees in Bangladesh are not required to pay any social security contribution. Resident employees must pay tax on their worldwide income as per the following schedule:

- First BDT250,000 (BDT250,000 for female and elderly persons):0%.
- Next BDT400,000: 10%.
- Next BDT500,000: 15%.
- Next NDT600,000: 20%.
- Next NDT3,000,000: Rest: 25%.
- Rest:30%

Non-tax resident employees

Non-tax resident employees must pay 30% tax on the gross amount of their earnings.

Employers

Companies with paid-up capital of BDT10 million or more and fixed assets of BDT20 million or more must set up a Workers' Profit Participation Fund (WPPF). The minimum financial contribution by the employer is 5% of net profit before tax, divided among the participation fund, welfare fund and the Workers' Welfare Foundation, at a ratio of 80:10:10 respectively.

Business vehicles

18. When is a business vehicle subject to tax in your jurisdiction?

Tax resident business

The definition of company includes both companies incorporated in Bangladesh and foreign companies registered in Bangladesh (branch offices). Any company registered in Bangladesh or any company controlled and managed wholly in Bangladesh is considered to be a tax resident of Bangladesh.

Non-tax resident business

Irrespective of residency status, businesses are subject to tax on income which is received or accrues in Bangladesh.

19. What are the main taxes that potentially apply to a business vehicle subject to tax in your jurisdiction (including tax rates)?

Bangladesh tax residents are taxed on their worldwide income, subject to International Financial Reporting Standards (IFRS) and applicable double taxation avoidance agreements (DTAAs). Major taxes payable include income tax and VAT.

Income tax returns must be filed annually between July and September each year. There is provision for a quarterly return for high revenue earning businesses. VAT returns must be filed on a monthly basis.

Non-resident business earnings are subject to tax on their gross earnings. Businesses are taxed at the following rates:

- Publicly traded company: 25%.
- Non-publicly traded company: 35%.
- Listed bank, insurance and financial company (except a merchant bank): 40%.
- Merchant bank: 37.5%.
- Cigarette manufacturing company: 45%.
- Publicly traded cigarette company: 45%.
- Mobile Phone Operator Company: 45%.
- Publicly traded mobile company: 40%.

VAT is imposed on goods and services at the import, manufacturing, wholesale and retail stages. A uniform VAT rate of 15% applies for both goods and services for all business or industrial units with an annual turnover of BDT2 million and above. Turnover tax at the rate of 4% is levied where annual turnover is less than BDT2 million.

Dividends, interest and IP royalties

20. How are the following taxed:

Dividends paid to foreign corporate shareholders?

Dividends received from foreign companies?

Interest paid to foreign corporate shareholders?

Intellectual property (IP) royalties paid to foreign corporate shareholders?

Dividends paid

Dividends are subject to withholding tax at the following rates (subject to any applicable DTAA's):

- Resident/non-resident Bangladeshi company: 20%.
- Resident/non-resident Bangladeshi individual: 10%/15%.
- Non-resident non-Bangladeshi individual: 30%.
- Non-resident non-Bangladeshi company: 20%.

Dividends received

Dividends received are accumulated with income and are taxed on a cumulative basis. However, a tax credit arising out of tax deducted at source is available.

Interest paid

Interest paid to residents is not subject to withholding tax. Interest paid to non-residents is subject to withholding tax at 25% for individuals and at the applicable rate stated in *Question 19* for companies. Exemptions are available for industrial undertakings in thrust sectors (see *Question 5, Tax holidays*).

Interest income is accumulated with total income and to be taxed on a cumulative basis. However, relevant tax credit arising out of tax deducted at source shall be available.

IP royalties paid

IP royalties paid are subject to 10% withholding tax. This withholding is the final tax settlement for these IP royalties paid.

Groups, affiliates and related parties

21. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)?

All private foreign borrowing must be approved by the Bangladesh Investment Development Authority (BIDA). Approval is easy to obtain for institutional lenders. However, permission for borrowing from equity holders and affiliates is generally only given for short term bridging arrangements.

Approval is subject to the following reservations:

- Loan tenure must be at least seven years.
- All in interest rate should be within the London Interbank Offered Rate (LIBOR) plus 4.5%.
- Down payment cannot exceed 10%.
- Debt to equity ratio should be within 70:30.
- The fund cannot be used as working capital.

22. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

Under local regulation, the profits of a foreign subsidiary do not need to be imputed to a parent company that is tax resident in Bangladesh. However, under FERA, the fund to which a local company is entitled cannot be unjustifiably withheld in a foreign jurisdiction.

23. Are there any transfer pricing rules?

Transfer pricing rules require that all international transactions between parties must take place at arm's length. The arm's length price is determined by applying the most appropriate method, which may be the:

- Comparable uncontrolled price method.
- Resale price method.
- Cost plus method.
- Profit split method.
- Transactional net margin method.

The Deputy Commissioner of Tax can make a ruling if it finds any evidence of tax evasion. Every person who has entered into any international transaction exceeding BDT20m is required to furnish an additional report from a Chartered Accountant with the annual return.

Customs duties

24. How are imports and exports taxed?

Imports are taxed at the following rates (subject to certain exemptions):

- Capital machinery: 3%.
- Basic raw materials: 7%.
- Intermediate raw materials and semi-finished products: 12%.
- Finished products: 25%.

Exports are in general duty exempt.

Double tax treaties

25. Is there a wide network of double tax treaties?

Bangladesh adopts the UN Model as its text for DTAAs. Bangladesh has DTAAs with UK, Singapore, Sweden, Korea, Canada, Pakistan, Romania, Sri Lanka, France, Malaysia, Japan, India, Germany, The Netherlands, Italy, Denmark, China, Belgium, Thailand, Poland, Philippines, Vietnam, Turkey, Norway, US, Indonesia, Switzerland, Mauritius, Saudi Arabia, UAE and Myanmar.

In most of these cases, dividends, interest and royalties are subject to a preferential withholding tax rate of 20% and 10% respectively.

Competition

26. Are restrictive agreements and practices regulated by competition law? Is unilateral (or single-firm) conduct regulated by competition law?

Competition authority

The Bangladesh Competition Commission (BCC) was brought into force under the provisions of the Competition Act 2012. A Commissioner was appointed in 2013.

Restrictive agreements and practices

Agreements that cause or are likely to cause an appreciable significant adverse effect on competition in Bangladesh are prohibited, including contracts that:

- Directly or indirectly determine purchase or sale prices.
- Limit or control production, supply, markets, technical development, investment or provision of services.
- Share the market, source of production or provision of services by way of allocation of geographical area of the market, type of goods or services, or number of customers in the market (or in any other similar way).
- Directly or indirectly result in bid rigging or collusive bidding.

Unilateral conduct

Abuse of dominant position is prohibited. There is an abuse of dominant position if a company:

- Directly or indirectly imposes unfair or discriminatory conditions or price in the purchase or sale of goods or services.
- Limits or restricts production of goods or services or technical or scientific development.
- Indulges in practices resulting in denial of market access.
- Concludes contracts imposing irrelevant terms.
- Uses its dominant position in one relevant market to enter into, or protect, the other relevant market.

27. Are mergers and acquisitions subject to merger control?

The BCC investigates and approves the mergers and acquisitions of entities, including foreign entities that have established a place of business in Bangladesh. The BCC can investigate any such proposal on its own volition or following a complaint by a third party.

Relevant statutory and regulatory authorities can make a reference to the BCC to determine the anti-competitive aspects of any transaction. The BCC must issue its decision within sixty days from the reference date. It can declare the transaction inappropriate or invalid if it feels that the transaction is likely to have an appreciable significant adverse effect on competition.

If during or after completion of an investigation of a complaint, the respondent, the BCC and the complainant agree on the terms of an appropriate order, the BCC can confirm that agreement through a consent order, without hearing of any evidence.

Intellectual property

28. Outline the main IP rights in your jurisdiction.

Patents

Definition and legal requirements. A patent is an exclusive right granted for an invention. An invention is a product or process that provides, in general, a new way of doing something, or offers a new technical solution to a problem.

Registration. Patents are granted under the Patents and Designs Act 1911. The inventor or an assignee of the inventor's right must file the patent with the Department of Patents, Designs and Trademarks, along with specifications and drawings.

Enforcement and remedies. The patentee or its true inventor (that is, the inventor or his employer) can enforce the patent. Patents can be opposed in the office of the Registrar of Patents, Designs and Copyrights, which has the power of a district court. Enforcement is through the district courts and appeals in the High Court. The courts can order seizure and confiscation, injunctions, damages and order the disposal of infringing goods.

Length of protection. Patents provide 16 years' protection from the date of filing of the application. From the fourth year, patents must be renewed each year.

Trade marks

Definition and legal requirements. A trademark is a distinctive sign which identifies certain goods or services as those produced or provided by a specific person or enterprise. A trademark must contain or consist of at least one of the following essential particulars:

- The name of a company, individual, or firm represented in a special or specific manner.
- The signature of the applicant for registration (or a predecessor in the case of a business, for example the earlier managing director of the company).
- One or more invented words.
- One or more words having no direct reference to the character or quality of the goods or services.
- Any other distinctive mark.

Protection. The owner of the trade mark must file the trade mark with the Department of Patents, Designs and Trademarks, along with specifications and specimens. Unregistered trademarks are not protected and cannot generally be enforced.

Enforcement and remedies. Trade marks can be opposed in the office of the Registrar of Patents, Designs and Copyrights within two months from the date of the advertisement in the Trade Marks Journal. Enforcement is through the district courts and appeals in the High Court. The courts can order seizure and confiscation, injunctions, damages or the disposal of infringing goods. No infringement or passing off actions can be brought for unregistered trademarks. However, oppositions and title suits can be exercised based on honest concurrent use, first use or convention rights. Bangladesh is a member of the Paris Convention.

Length of protection and renewability. Initial registration is for seven years. It is then renewable for ten year periods.

Registered designs

Definition. An industrial design is the ornamental or aesthetic aspect of an object. The design can consist of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features, such as patterns, lines or colour. The design must be unpublished to be registered.

Registration. Designs are protected under the Patents and Designs Act 1911. Designs must be filed with the Department of Patents, Designs and Trademarks for registration.

Enforcement and remedies. Enforcement is through the district courts and appeals in the High Court. The courts can order seizure and confiscation, injunctions, damages and the disposal of infringing goods.

Length of protection and renewability. Registration is for five years. It can be renewed twice, and each renewal is valid for five years.

Copyright

Definition and legal requirements. Copyright limits the activities of copying, reproducing, circulating, printing, recording, publishing, displaying or transmitting any original work of authorship in a tangible medium.

Protection. The author of any expression in a tangible medium is automatically entitled to the copyright of that work. Copyrights can be filed with the Department of Copyright for registration.

Enforcement and remedies. To enforce a copyright, either the:

- Work must be published first in Bangladesh.
- Government must declare that copyrights from the jurisdiction of the copyright's first production are eligible for protection.

Enforcement is through the district courts and appeals in the High Court. The courts can order seizure and confiscation, injunctions, damages and disposal of the infringing goods.

Length of protection and renewability. For published literature, drama, song or artistic works, the copyright is for 60 years from the first calendar year after the death of the copyright owner. For films, sound recordings, photographs and computer programs or other IT works, the 60-year period begins from the first transmission or publication of the work.

Marketing agreements

29. Are marketing agreements regulated?

Agency and distribution

Although addressed in the Contract Act 1872, there is no specific law controlling or regulating agency and distribution. Agency and distribution must be registered with the Bangladesh Bank using Form 18A for repatriation of proceeds (*GFET*).

Franchising

There is no specific regulation for franchising and the major issues are decided by the contractual terms and conditions of the agreements. However, FERA regulates the remittance issues. The maximum rate of royalty is:

- 6% of the total revenue earned in the last fiscal year.
- For new companies, 6% of the total capital invested.

E-commerce

30. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)?

The Information Communication Technology Act 2006 (ICTA) introduces the registration and recognition of digital signatures. ICTA empowers the government to make use of digital signatures mandatory in any specific communication, information or document, and recognise third party digital signatures in Bangladesh.

There is no law regulating distance selling through electronic platforms. However, a licence is required under the MLM Control Act 2013 if these activities are undertaken both:

- On a multi-layered network where there is series of distribution layers (that is, first layer distributors appoint another layer of distributors and so on).
- With a specified commission or dividend, or any other facilities paid for marketing or selling (for example, a commission and dividends for engaging sales agents or sales at different layers).

Cross-bank electronic commerce was introduced by the Payment and Settlement System Regulation 2009, which enabled the creation of the Bangladesh Electronic Funds Transfer Network (BEFTN) facilitating electronic commerce. To ensure the platform's security, the Bangladesh Bank has released the Guidelines for ICT Security for Scheduled Banks and Financial Institutions in 2010.

Advertising

31. Outline the regulation of advertising in your jurisdiction.

There is no legislation dealing specifically with advertising in Bangladesh. The Penal Code of Bangladesh prohibits the circulation of any obscene material. In addition, the propagation of pornography and obscene, defaming materials, and incitement to commission any illegal activity is a punishable offence (*ICTA*).

Various other laws regulate advertising in specific areas, including the:

- Pornography Control Act 2013.
- Undesirable Advertisement Control Act 1952.
- Drugs Act 1940.
- Competition Act 2012.
- Consumer Rights Protection Act 2009.
- Information and Communication Protection Act 2006.

Data protection

32. Are there specific statutory data protection laws? If not, are there laws providing equivalent protection?

There is no specific privacy or data protection law. The Constitution of Bangladesh grants every citizen the right to the privacy of his correspondence and other means of communication. Anyone intruding on the privacy of any woman is punishable with imprisonment for up to one year and/or a fine (*Penal Code of Bangladesh*).

Unauthorised entry into any computer system is a punishable offence. In addition, it is a punishable offence to disclose any record, book, register, message exchange, data or file to another person, even if authorised to view or process those materials, without the permission of the concerned person (*ICTA*).

Product liability

33. How is product liability and product safety regulated?

The Bangladesh Standard Testing Institute (BSTI) sets the national standards for industrial, food and chemical products in Bangladesh. Products must be registered with the BSTI before being marketed in Bangladesh (except for products in a few categories, such as drugs).

Product liability and product safety are regulated by the Directorate of National Consumer Rights Protection, established under the Consumer Protection Act 2009 (CRPA). The following offences are subject to civil and criminal sanctions (CRPA):

- To sell or offer to sell any goods, medicine or service at a higher price than the fixed price under any law.
- To sell or offer to sell adulterated goods or medicine knowingly.
- To sell or offer to sell any goods containing any ingredient which is extremely injurious to human health and the mixing of which with any food item is prohibited under law.
- To deceive consumers by untrue or false advertisement with the purpose of selling any goods or service.
- Not to sell or deliver properly any goods.

Main business organisations

Board of Investment (BIDA)

W www.BIDA.gov.bd

Main activities. This is the government trade department with guidance and information on foreign investment. It:

- Registers industrial projects to facilitate investment incentives and non-cash considerations for investment.
- Issues work permits for all purposes.
- Approves foreign borrowings.
- Permits branch and liaison offices.

Registrar of Joint Stock Companies (RJSC)

W www.roc.gov.bd

Main activities. Official government companies register. Registers and maintains private and public limited companies and branch of foreign companies. Maintains security and mortgage registers for companies.

Bangladesh Bank (BB)

W www.bangladesh-bank.org

Main activities. This is the central bank of Bangladesh and financial services regulator. It regulates all foreign exchange transactions and remittances.

National Board of Revenue (NBR)

W www.nbr-bd.org

Main activities. This is the central authority for tax administration and consists of the Income Tax Department, VAT Authority and Customs Authority.

Chief Controller of Import & Export

W www.ccie.gov.bd

Main activities. This regulates import to and export from Bangladesh. It also issues Import Registration Certificates, Export Registration Certificates and import/export permits.

Online resources

Laws of Bangladesh

W <http://bdlaws.minlaw.gov.bd/>

Description. Maintained by Ministry of Law & Parliamentary Affairs. Contains official up-to-date legislations and statutes. Updated in almost every quarter. Legislations and statutes are provided only in language of first release.

Contributor profiles

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Non-professional qualifications. LLB, University of London; MBA in corporate finance, IBA, University of Dhaka

Recent transactions

- Counsel to US\$150million syndicated lending led by China EXIM Bank in Kodda Power Plant.
- Counsel to US\$500million lending by China Development Bank in a toll road project in Bangladesh.
- Counsel to IDB for US\$15million Shariah based financing in Jhulda Power Plant.
- Advising Gates Foundation in its private equity investment.
- Advised AES in its acquisition of Covanta Portfolio.
- Advised GlaxoSmithKline in acquisition of a pharmaceutical company.
- Lease finance counsel to General Electric Capital and International Lease Finance Corporation.
- Capital market counsel to Morgan Stanley, Citigroup, ABN Amro and Credit Suisse Trust.
- Acted for Zhenhua Oil for the \$US2billion acquisition of three oilfields and one gas compression station from Chevron.
- Acting for IFC and Exceleerate Energy as their common counsel in the US\$1billion Maheshkhali Floating Storage & Regasification Terminal Project

- Acting for Sinosure in Chittagong 2X612 and Payra 2X612 MW Coal Fired Power Plants, and two other sponsors in two other coal fired power plants.
- Acted as the common counsel in carrying out the Bangladesh aspects of the US\$50billion Lafarge and Holcim merger.
- Acting in structuring diverse PPP projects including Payra Port, Chinese Economic Zone at Anwara, Rooppur Nuclear Plant, various components of South Asia Sub-regional Economic Cooperation (SASEK) Road.
- Advised ONGC-OIL JV and POSCO Daewoo in three separate PSC contracts for exploration in three offshore blocks

Languages. Bengali, English

Publications. *Bangladesh M&A Regime (Lexis Nexis), Project Finance (GTDT), Legal Aspects of Doing Business in Asia (CILS), Foreign Tax & Trade Briefs (Lexis Nexis), Commercial Laws of the World (WestLaw), Franchising in Asia (Lex Noir) and Money Laundering, Asset Forfeiture & Compliance (Lexis Nexis).*

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Areas of practice. Mergers and acquisitions; private equity; banking and finance; employment law; real estate.

Non-professional qualifications. LLB, Dhaka University

Recent transactions

- Advised Ningbo Cixingin in US\$10million private equity investment.
- Advised IDP in US\$10million private equity investment.
- Advised in raising US\$10million equity by preferred shares for Fenchuganj Power Plant.
- Advised Nokia in US\$5million private equity investment.
- Advising Mitsubishi in Acquisition of ETA Melco.
- Advised Finnfundin in US\$8million finance in Meghnaghat power plant syndication with SCB.
- Advised Underwrite Laboratories in acquisition of Magnus Textiles.
- Advised Isolux 450MW Sidhdhirganj power plant EPC.
- Advised Kuantain Coxbazaar Airport Project.
- Employment consultant to GAP, Puma, EWM, Maxim, Wal-mart, Primark and others.
- Acted for China Railway Construction Company in its potential acquisition of US\$1billion First Dhaka Elevated Expressway Project
- Represented sponsors in Sutiakhali and Teknaf Solar Park Plants (IPP) in negotiation to execute PPAs. Acting in five more solar projects under development by different sponsors.
- Acting as Bangladesh Counsel for Evergreen Group having thirteen industries in Bangladesh for initial public offering on the Hong Kong Exchange.
- Acting for Semen Indonesia in a high value acquisition of a large Cement Plant in Bangladesh.
- Represented Sinohydro in negotiating the river training contract for the US\$3billion Padma Bridge Project

Languages. Bengali, English

Publications. *Project Finance (GTDT)*, *Employment Terms & Conditions (Towers Watson)*.

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Professional qualifications. Lawyer, Bangladesh

Areas of practice. Corporate and commercial matters; anti-trust; litigation; arbitration.

Non-professional qualifications. LLB, University of Chittagong

Recent transactions

- Acting for BNP Paribas in a large scale banking lawsuit in the Bangladesh courts.
- Acted for Cargill in a dispute on the issue of legal capacity for enforcement of an arbitration award in the Bangladesh courts.
- Acted for Sabah Shipyard for a dispute over the ownership of the Westmont Barge Mounted Power Plant.
- Acting for Alteco Chemicals in a number of anti-infringement lawsuits in Chittagong.
- Acting for S.V. Marine Co. Ltd., Singapore in a large volume admiralty dispute.
- Acting in enforcement of an arbitral award on behalf of MAN Industries, India.

Languages. Bengali, English

Publications. *Doing Business in Bangladesh (CILS)*, *Enforcement of Money Judgments (Juris Publication)*, *Attachment of Assets (Juris Publication)*.

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