

Firm: Vertex Chambers

Authors: Junayed Ahmed Chowdhury, Sajeda Farisa Kabir and Abdul Monem Khan

## 1. What is the general situation for foreign companies in your jurisdiction? (For example, common presence, difficulty to setup, restrictive system, open and welcoming jurisdiction?)

Bangladesh offers generous opportunities for investment under its relaxed Industrial Policy and export-oriented, private sector-led growth strategy. Except for the reserved sectors (arms, ammunition and other defence equipment and machinery; production of nuclear energy; forest plantation and mechanized extraction within the bounds of reserved forests; security printing (currency notes); and mining), 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:

- (a) Make foreign direct investment; or
- (b) Establish wholly owned subsidiary companies; or
- (c) Incorporate joint venture companies with a Bangladeshi partner; or
- (d) Set up a presence in Bangladesh through a representative office, liaison office or branches. However, the activities of these entities are restricted to those set forth in their approvals; or
- (e) Participate in an existing Bangladeshi company by purchasing shares.

Foreign persons and entities are allowed to own up to 100% equity in Bangladeshi companies and there are also no restrictions on ownership of land by 100% foreign owned local companies. However, it has to be kept in mind that Bangladesh has rigid registration procedures and strict regulatory requirements which often impede market access for companies in general.

## 2. What are the key laws and regulations that govern company law in your jurisdiction?

The key laws that govern a company in Bangladesh are the Companies Act 1994 and the Companies Rules 2009 made thereunder.

## 3. What are the most common types of companies in your jurisdiction?

The most common types of companies in Bangladesh are:

- (a) Private limited company, which is defined under the Companies Act 1994 as a company with at least 2 (two) shareholders and which, by its articles:
  - (i) restricts the right to transfer its shares, if any; and
  - (ii) prohibits any invitation to the public to subscribe for its shares or debenture, if any; and
  - (iii) limits the number of its members to 50 (fifty) not including persons who are in its employment.
- (b) Public limited company is defined under the Companies Act 1994 as a incorporated company which is not a private company. A public company is required to have at least 7 (seven) members.

## 4. How long does it take to set up a company in your jurisdiction? (For example, it could be as fast as X amount of time, average setup time and then as slow as Y amount of time based on your experience - are there any mechanisms to fast track setup?)

It takes minimum 10-15 working days to complete all the procedures to incorporate

a company in Bangladesh. However, generally the timeline stretches from 15-60 days.

## **5. What are the main registration requirements for companies in your jurisdiction?**

### **Registration Requirement**

In order to register a company in Bangladesh, the promoters of a new entity (having name clearance, where applicable) is required to apply for registration with the Office of the Registrar of Joint Stock Companies and Firms (RJSC) with necessary documents, prescribed forms, schedules and fees, as appropriate to the entity type. The promoters need to do the following:

- (a) Prepare memorandum and articles of association as appropriate to the entity type;
- (b) Submit the registration application through a website; and
- (c) Pay the registration fee at the designated Bank.

The registration application has to include the following:

#### **(a) Private and Public Company**

- (i) Memorandum and articles of association (original + 2 copies).
- (ii) Filled in Form I: Declaration on registration of company.
- (iii) Filled in Form VI: Notice of situation of registered office.
- (iv) Filled in Form IX: Consent of director to act.
- (v) Filled in Form X: List of persons consenting to be directors.
- (vi) Filled in Form XII: Particulars of the directors, manager and managing agents and of any change.
- (vii) Evidence of name clearance.
- (viii) Special adhesive stamps and treasury challan from Bangladesh Bank to treasury (photocopy) of collecting the stamps.

#### ***Additional forms for a Public Company***

- (i) Filled in Form XIV: Declaration before commencing business in case of company filing statement in lieu of prospectus.

- (ii) Filled in Form XI (if necessary): Agreement to take qualification shares in proposed company.

#### **(b) Foreign Company**

- (i) Filled in Form XXXVI - Charter or statutes of the company or other instrument constituting or defining the constitution of the company.
- (ii) Filled in Form XXXVII - Notice of the address of the registered or principal office of the company.
- (iii) Filled in Form XXXVIII - List of directors and managers.
- (iv) Filled in Form XXXIX - Return of persons authorised to accept service.
- (v) Filled in Form XLII - Notice of situation of the principal place of business in Bangladesh or of any change.
- (vi) Encashment certificate obtained from any scheduled bank.
- (vii) Permission from the Bangladesh Investment Development Authority.

### **Fees**

#### **(a) Private Company**

- (i) Registration filing fee: BDT 1,200.
- (ii) Stamp of Memorandum of Association and Articles of Association Fee: BDT 9,150.
- (iii) Fee for certified copy of the Memorandum of Association, Form XII and Digital Certificate: BDT 1,220.

It is to be noted that the registration fee for a private company varies depending on the authorised capital of the company. For example, for authorised capital of BDT 10,00,000, there is no registration fee. However, a registration fee of BDT 500 will be applicable for every BDT 10,00,000 in addition to the first BDT 10,00,000. Similarly, for an authorised capital of BDT 1,00,00,000, the registration fee is BDT 6,000 and for further addition of every BDT 1,00,00,000, the registration fee will be increased by BDT 8,000.

## About Author



**Junayed Ahmed Chowdhury**  
Managing Partner, Vertex Chambers

Email: [jchowdhury@vertexchambers.com](mailto:jchowdhury@vertexchambers.com)

Junayed Ahmed Chowdhury is an Advocate of the Supreme Court of Bangladesh, and a Barrister-at-Law of the Honourable Society of Lincoln's Inn, London, the United Kingdom. He is the Managing Partner of Vertex Chambers, a leading corporate and commercial law firm in Bangladesh. Mr. Chowdhury completed his LL.B from University of London and holds an LL.M from the University of Chicago Law School. He specializes in Corporate and International

Taxation, Corporate law, Construction and Infrastructure laws, M&A and International Finance law. He is the author of the leading Bangladeshi practitioners' textbook "Corporate Tax Law and Practice" (published by Mullick Brothers), which has been catalogued by the British Library and the University of Chicago D'Angelo Law Library. He also holds the license to practise foreign law as a Registered Foreign Lawyer under the Law Society of New South Wales, Australia.

### (b) Public Company

- (i) Registration filing fee: BDT 1,600.
- (ii) Stamp of Memorandum of Association and Articles of Association Fee: BDT 9,150.
- (iii) Fee for certified copy of the Memorandum of Association, Form XII and Digital Certificate: BDT 1,620.

The registration fees for public companies are same as private companies described above.

### (c) Foreign Company

- (i) Registration filing fee: BDT 2,400.
- (ii) Registration fee: BDT 2,000.

It should be noted that the above listed fees are subject to 15% VAT.

**6. What are the main post-registration reporting requirements for companies in your jurisdiction? (For example, annual reporting requirements: what to file, to whom, is a company secretary required?)**

Registered companies are required to file documents pertinent to their management/operation in prescribed forms and schedules called Returns Filing at RJSC. There are 2 (two) types of Returns Filing – (a) annual returns filing and (b) returns filing for any change in an entity. Returns to be submitted are as follows:

### (a) Private and Public Company

#### *Annual Returns*

- (i) Schedule X - Annual summary of share capital and list of shareholders,
- (ii) Directors: to be filed within 21 days of annual general meeting.
- (iii) Balance Sheet: to be filed within 30 days of annual general meeting.  
Profit & Loss Account: to be filed within 30 days of annual general meeting.
- (iv) Form 23B; Notice by Auditor: to be filed within 30 days of receiving appointment information from the company.

*(Additional returns for Public Company)*

- (v) Filled in Form IX - Consent of Director to act: to be filed within 30 days of appointment.
- (vi) Filled in Form XII - Particulars of the Directors, Manager and Managing Agents and of any change therein: to be filed within 14 days from the date of appointment or change.

#### **Returns for Change**

- (i) Filled in Form III - Notice of consolidation, division, subdivision or conversion into stock of shares: to be filed within 15 days of consolidation and division etc.
- (ii) Filled in Form IV - Notice of increase of share capital: to be filed within 15 days of increase of share capital/member.
- (iii) Filled in Form VI - Notice of situation of Registered Office and of any change therein: to be filed within 28 days of establishment or change.
- (iv) Filled in Form VIII: Special Resolution/ Extraordinary Resolution including name change, conversion into public company, alteration of the memorandum of association, alteration of articles of association etc.: to be filed within 15 days of the meeting.
- (v) Filled in Form IX - Consent of Director to act: to be filed within 30 days of appointment.
- (vi) Filled in Form XII - Particulars of the Directors, Manager and Managing Agents and of any change therein: to be filed within 14 days from the date of appointment or change.
- (vii) Filled in Form XV - Return of allotment: to be filed within 60 days of allotment.
- (viii) Filled in Form XVIII - Particulars of mortgages or charges: to be filed within 21 days of creation of the mortgage or charge.
- (ix) Filled in Form XIX - Particulars of Modification of Mortgage or Charge: to be filed within 21 days of the date modification.

- (x) Filled in Form XXVIII - Memorandum of satisfaction of mortgage charge: to be filed within 21 days of the date satisfaction.
- (xi) Filled in Form 117 - Instrument of Transfer of Shares: to be filed at the time of share transfer.

#### **(b) Foreign Company**

##### **Annual Returns**

- (i) Balance sheet.
- (ii) Profit & loss account or income or expenditure account (if not trading for profit).

##### **Returns for Change**

- (i) Filled in form XL: Notice of alteration in charter, etc.
- (ii) Filled in form XLI: Notice of alteration in the address of the registered or principal office of company.
- (iii) Filled in form XLII: Notice of situation of the principal place of business in Bangladesh or of any change therein.
- (iv) Filled in form XXXVIII: List of Directors and Managers.
- (v) Filled in form XXXIX: Return of persons authorized to accept service.
- (vi) Filled in Form XVIII - Particulars of mortgages or charges: to be filed within 21 days of creation of the mortgage or charge.
- (vii) Filled in Form XIX - Particulars of Modification of Mortgage or Charge: to be filed within 21 days of modification.
- (viii) Filled in Form XXVIII - Memorandum of satisfaction of mortgage charge: to be filed within 21 days of satisfaction.

#### **7. Are there any controlling factors or restrictions on foreign companies in your jurisdiction?**

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One restriction applicable to all companies in Bangladesh is regarding the employment of expatriates. The number of the expatriate employees in an industrial enterprise cannot exceed 1:20 (foreign : local) ratio at any time during regular production and the ratio for

commercial offices must be 1:5 (foreign : local).

## **8. What is the typical structure of directors (or family management structure) and liability issues for companies in your jurisdiction?**

There is no general or typical structure that is binding or applicable to companies in Bangladesh. However, the Corporate Governance Code 2018 provides a guideline for any company listed with any stock exchange in Bangladesh to have a Board of Directors that must consist a minimum of 5 members and a maximum of 20 members. Furthermore, the Corporate Governance Code 2018 requires independent directors on the board of a listed company who, among others, do not hold any share in the company or holds less than 15 shares of the total paid-up capital and are not connected or related to the company's sponsor, director, nominated director or shareholders or sister concerns.

The liabilities of directors are limited to their fiduciary duties. Moreover, the liability of the directors may be unlimited, if so stated in the memorandum. If it is not stated in the memorandum then, a special resolution may be passed to alter the memorandum to render the liability of the directors to be unlimited. Furthermore, the Companies Act 1994 makes void the provisions made in the articles of association of a company that exempt or indemnify directors from liability which would otherwise be imposed on such directors for negligence, default, breach of duty or breach of trust under the laws of Bangladesh.

## **9. What is the minimum number of directors and shareholders required to set up a company in your jurisdiction? Are there any requirements that a director must be a natural person?**

A private company is required to have minimum 2 (two) directors/shareholders. A public company is required to have at least 7 (seven) shareholders and 3 (three) directors.

The Companies Act 1994 requires a director of a company to be a natural person.

## **10. What are the requirements on how shares are offered in your jurisdiction?**

### Private Company

Private limited companies are prohibited from making any invitation to the public to subscribe to shares of the company. Private companies may offer shares by way of allotment. However, such shares must first be offered to other existing members of the private limited company. If no existing shareholder is interested, then shares of the company can be allotted to an outsider at a price which the directors may think most beneficial to the company.

### Public Company

A company can make public offer/listing of shares if they are listed with either of the stock exchanges of Bangladesh. According to the Bangladesh Securities and Exchange Commission (Public Issue) Rules 2015, a public company, in order to make an application for a public offer of its shares, amongst others, has to satisfy the following general requirements:

- (a) Preparation of its financial statements in accordance with the requirements of the Securities and Exchange Rules 1987, the provisions of IFRS/IAS as adopted in Bangladesh and audited as per Bangladesh Standards on Auditing (BSA) as well as the Companies Act 1994 and other applicable legal requirements.
- (b) No material changes have been made including raising of paid-up capital after the date of audited financial statements as included in the prospectus.
- (c) Any person involved in the company cannot be connected with the issuer or any of its connected person or hold any securities thereof.
- (d) The company must have its costs audited by professional accountants as per the Companies Act 1994, if applicable.
- (e) The company must have its latest financial statements audited by the panel auditors as declared by the Bangladesh Securities and

## About Author



**Sajeda Farisa Kabir**  
*Partner, Vertex Chambers*

Email: [farisa.kabir@vertexchambers.com](mailto:farisa.kabir@vertexchambers.com)

Sajeda Farisa Kabir is a Solicitor of New South Wales, Australia, an Advocate of the Supreme Court of Bangladesh, and a Barrister-at-Law of the Honourable Society of Lincoln's Inn, London, United Kingdom. She is the Founding Partner of Vertex Chambers, a leading corporate and commercial law firm in Bangladesh. She completed her LL.B from Cardiff University, the United Kingdom. Ms. Kabir served as

an Associate Director of the Human Rights and Legal Services (HRLS) Program of BRAC, the largest NGO in the world. She also chaired BRAC's Sexual Harassment Redressal Committee from 2015 to 2018. Mrs. Kabir is a leading figure in the field of law, development and access to justice, and is an expert on contract, corporate and charity laws.

Exchange Commission from time to time.

- (f) The company must have been holding regular annual general meetings.
- (g) The company has been rated by a credit rating company registered with the the Bangladesh Securities and Exchange Commission.
- (h) The company must have complied with the provisions of corporate governance guidelines as published by the Bangladesh Securities and Exchange Commission from time to time.
- (i) The company must have complied with all the requirements of the Bangladesh Securities and Exchange Commission (Public Issue) Rules 2015 in preparing its prospectus.
- (j) The company must have no accumulated retained loss at the time of application.
- (k) The company must have complied with the

provisions of guidelines regarding valuation of assets, if any, as published by the Bangladesh Securities and Exchange Commission from time to time.

- (l) The issuer or any of its directors and shareholders holding 10% or more shares must not be a loan defaulter as per the latest CIB report of Bangladesh Bank.

Other requirements for fixed price method, book-building method and eligibility criteria may be applicable depending on the method of share offer of the company.

### **11. What are the key laws and regulations on employment in your jurisdiction that companies should be aware of? Are there any aspects of employment law that are heavily regulated?**

The key laws and regulations that govern employment in Bangladesh are the Bangladesh Labour Act 2006 and Bangladesh Labour Rules 2015. The

Bangladesh Labour Act 2006 and Bangladesh Labour Rules 2015 deal with condition of employment, working hours, leave, payment of wages, settlement of disputes, compensation and injury and participation of workers in the profit of the companies.

The Bangladesh Labour Act 2006, heavily regulates the participation of workers in the profit of the company, establishment and registration of trade union and constitution of provident fund.

**12. What is the nature of the corporate governance regime in effect in your jurisdiction? What agencies or government bodies regulate corporate governance?**

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The Corporate Governance Code 2018 was introduced in Bangladesh for the first time on 3 June, 2018 which is applicable for listed public limited companies. In terms of characteristics, this Code can be said to be more focused on the composition of the Board of Directors and lacks concentration in the area of shareholders' involvement, especially approval of shareholders in directors' actions. The requirements of disclosure by the directors are also absent. The Corporate Governance Code 2018 mainly deals with the formation of a Board of Directors and the responsibilities of Directors. The Bangladesh Security and Exchange Commission is the governing body that regulates Corporate Governance in Bangladesh.

Private companies per se have no corporate governance rule. However, the Companies Act 1994 precludes a director from dealing on behalf of the company by himself and from entering in to engagements in which he has a conflicting personal interest or which may possibly conflict with the interest of the company unless such is disclosed by the director at the meeting of the directors at which the contract or arrangement is determined.

**13. Does establishing a company in your jurisdiction grant any kind of residency rights? Are there any conditions that in order to receive these residency rights (if applicable) one must partner or establish a joint venture with a local (e.g. a citizen of your jurisdiction)?**

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Bangladeshi jurisdiction provides residency rights against investments made by foreign investors, provided they fulfill certain conditions as mentioned below:

- (a) Citizenship by investing a minimum of US\$ 5,00,000 or by transferring US\$ 10,00,000 to any recognized financial institution (non-repatriable).
- (b) Permanent resident by investing a minimum of US\$ 75,000 (non-repatriable).

Furthermore, the Foreign Exchange Regulation Act 1947 states that a "person is resident in Bangladesh" when, amongst others, (a) he has resided in Bangladesh for six months or more in the last twelve months; (b) he is temporarily residing in Bangladesh with a residential or working visa valid for not less than 6 (six) months; (c) his place of business is in Bangladesh; or (d) he has a branch or liaison office or representative office in Bangladesh with the principal place of business being located outside Bangladesh. A person in the above context also includes a company.

**14. When is a company subject to tax in your jurisdiction? What are the main taxes that may apply to companies in your jurisdiction?**

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Any company registered in Bangladesh has to file income tax returns. The main taxes that a company may have to incur is the annual income tax, value added tax (VAT) for services and municipality taxes depending on location of its office.

**15. How does the competition law in your jurisdiction regulate companies?**

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The Competition Act 2012 in Bangladesh contains provisions to promote, ensure and sustain a congenial atmosphere for the competition in trade, and to prevent, control and eradicate collusion, monopoly and

oligopoly, combination or abuse of dominant position or activities adverse to the competition. For such purposes the Bangladesh Competition Commission has been established under the Act which regulates companies by putting embargos on anti-competition agreement, abuse of dominant position and also by conducting inquiries and issuing interim orders based on the inquiries. The Bangladesh Competition Commission has powers to prohibit combinations and collusions that may cause adverse effect on the competition. Non-compliance with any order of the Bangladesh Competition Commission may result in imprisonment or fine or both.

### **16. What are the main intellectual property rights companies should be aware of in your jurisdiction?**

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The main intellectual property rights companies should be aware of are:

- (a) Trademarks –under the Trademark Act 2009 and the Trademark Rules 2015;
- (b) Geographical Indications – under the Geographical Indication Goods (Registration and Protection) Act 2013 and Geographical Indication Goods Rules 2015;
- (c) Patents and Designs – under the Patents and Designs Act 1911 and the Patent and Design Rules 1933; and
- (d) Copyright – under the Copyright Act 2000 as amended in 2005 and the Copyright Rules 2010.

### **17. Does your jurisdiction have laws or regulations that govern data privacy?**

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There are no specific laws regulating data privacy in Bangladesh. However, in 2018 the Government enacted the Digital Security Act 2018 to ensure national digital security and regulate digital crime.

### **18. Are there any incentives to attract foreign companies to your jurisdiction?**

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There are several incentives offered for foreign companies in Bangladesh, especially in respect of foreign investment. The following

incentives are worth mentioning:

#### **Ownership:**

Foreign investors can set up ventures, either wholly owned or in joint collaboration with local partners.

#### **Tax holiday, exemption and avoidance:**

- (a) 5 to 10 years of tax holiday and reduced tax depending on the location of the industrial enterprise.
- (b) Tax exemption on income of the private sector power generation company for 15 (fifteen) years from the date of commercial production.
- (c) Avoidance of double taxation on the basis of bilateral Double Taxation Avoidance Treaties.

#### **Accelerated depreciation:**

Industrial undertakings not enjoying tax holiday will enjoy accelerated depreciation allowance.

#### **Equal treatment:**

Fair and equitable treatment is afforded to foreign private investment with full protection and security in Bangladesh. Furthermore, foreign private investments are protected from nationalisation and expropriation.

### **19. What is the law on corporate insolvency in your jurisdiction?**

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Corporate insolvency in Bangladesh is covered by the Bankruptcy Act 1997 and the Companies Act 1994.

### **20. Have there been any recent proposals for reforms or regulatory changes that will impact company law in your jurisdiction?**

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In 2008, a decision to draft a new companies act was taken up by the Ministry of Commerce. In 2015, RJSC convened a meeting to review its progress and decided to place the new draft companies act for stakeholder consultation. Currently the status of the draft act is unknown.

## About Author



**Abdul Monem Khan**  
*Consultant, Vertex Chambers*

Email: [amkhan@vertexchambers.com](mailto:amkhan@vertexchambers.com)

Abdul Monem Khan is a consultant-associate at Vertex Chambers. He completed his LL.B from the University of London followed by an LL.M at Brunel University, the United Kingdom.

### **21. Are there any features regarding company law in your jurisdiction or in Asia that you wish to highlight?**

- (a) The Companies Act 1994 needs updating to include amongst other, provisions for employee share ownership, mergers, demergers, spin off, hostile takeovers, valuation of shares in case of mergers and amalgamations, more comprehensive shareholder dispute mechanism and dedicated corporate dispute resolution forum.
- (b) The supplemental legal regime should also be amended to enable more vibrant corporate activities like exempting inter-company dividend from taxation.

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### **About the Author:**

**Junayed Ahmed Chowdhury**

*Managing Partner, Vertex Chambers*

E: [jchowdhury@vertexchambers.com](mailto:jchowdhury@vertexchambers.com)

**Sajeda Farisa Kabir**

*Partner, Vertex Chambers*

E: [farisa.kabir@vertexchambers.com](mailto:farisa.kabir@vertexchambers.com)

**Abdul Monem Khan**

*Consultant, Vertex Chambers*

E: [amkhan@vertexchambers.com](mailto:amkhan@vertexchambers.com)

**Shafayat Zaman**

*Pupil, Vertex Chambers*

### **About the firm:**

**Vertex Chambers**

W: [www.vertexchambers.com/](http://www.vertexchambers.com/)  
A: Tower Hamlet (14th Floor),  
16 Kemal Ataturk Avenue,  
Banani, Dhaka-1213,  
Bangladesh.  
T: +88 029 891 037  
F: +88 029 897 085