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UPDATE ON INVESTMENT LICENSING IN BANGLADESH: NEW BIDA PRACTICES

Dubbed by some “an economic miracle”, even the global pandemic has not been able to stamp out Bangladesh’s upward development trajectory. It eked out its larger neighbor India in terms of GDP growth according to World Bank reporting, at least in 2021, and its projected GDP growth for 2022 is higher than that of Pakistan, Sri Lanka or Nepal. To sum it up, Bangladesh is poised to make one of Asia’s strongest comebacks in the post-COVID era.

The right moment, therefore, to provide an update on the practices of Bangladesh’s primary investment facilitator, the Bangladesh Investment Development Authority (“**BIDA**”). In this client note, rather than reciting the rules and processes, we zero in on some of the noteworthy practical and new things to know when it comes to licensing investment projects by BIDA.

Registration with BIDA (and why your application might not move forward)

Every foreign owned company will in one degree or another need BIDA to operate in Bangladesh, regardless if it will carry out an investment project with capital assets, land and construction, or if it will rather perform services or trading without much, or any, need for investment. Only BIDA can, to name but a few examples, deliver tax incentives to applicant industrial investors, issue work permits and visa recommendations, approve the payment of royalties and technical fees by companies and -together with the

Highlights of this note

- ▶ Registration with BIDA (and why your application might not move forward)
- ▶ Inward capital remittance
- ▶ How problematic is the land during a BIDA application?
- ▶ Practical solutions are sometimes needed during the BIDA process

Bangladesh bank, approve foreign loans.

Whereas in some countries the establishment of the company is only done after the investment licensing process, or during, in Bangladesh the corporate entity can be established, at least for a great number of sectors, as a first step and thus before the investment licensing. Typically, therefore, the company will have been incorporated before the investor applies to register with BIDA.

The application to BIDA is basically a collection of the corporate documents of the newly established entity, plus. After

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the application, the hardworking BIDA team will begin vetting (see more on that below) and might ask some clarifications. Large meetings or committee hearings with the applicant are not part of the process

Inward capital remittance

In our day-to-day practice, we notice several potential pitfalls that might cause the BIDA application to encounter delays which might be avoidable. One example is the verification of the funds already remitted into Bangladesh. The practice is to open a temporary account with a bank as part of preparing the registration of the company. The investor will remit funds into that temporary account. As part of the BIDA vetting, the bank might be contacted to verify independently that the applicant indeed has an account and indeed has funds. This way BIDA curbs the potential entry of underfunded or sham companies into its market. The communication between the bank and BIDA might not always be easy. Within large financial institutions sometimes the right person cannot immediately be located. Normal postal services sometimes get misdirected. In our experience, it is worthwhile to maintain engaged with all stakeholders to see if any potential delays can be minimized.

How problematic is the land during a BIDA application?

Every applicant needs a location, and every project needs land. Foreign owned companies may purchase and own land that is needed for their project. SPA's and land leases (in excess of 1 year) are required to be registered with the Land Registry, which will also trigger fees and

stamp duties. The notoriously difficult legal environment of land rights in Bangladesh goes well beyond the BIDA process. The underlying weakness of the land title system itself can normally not really be remedied by BIDA. BIDA may, and normally should, do an actual site visit, mainly to verify if the site is vacant. This may in and of itself not bring land disputes to the surface. Studies show that one in five households in Bangladesh are involved in a land dispute of some kind, and combined with a land rights documentation system that is still in development, such an environment requires extraordinary preparatory steps for investors.

BIDA will expect the purchase deed, SPA or lease document as part of the application, but usually does not go as far as to require the ownership documents of, for example, the seller or the lessor to the applicant. However, a recent trend we have noticed, is related to the tax compliance aspects. BIDA has on occasion asked for the evidence of payment of land related taxes. The tax receipts will also be a good indication of who the rightful owner of the land is.

Practical solutions are sometimes needed during the BIDA process

Bangladesh has made great progress in recent years modernizing and improving its investment regulatory framework. But regulatory requirements for investors, even for companies without heavy capital investment, remain rather significant. Any type of investor will be required to apply for several dozen permits, licenses and approvals. It is not surprising that at times, some of the regulations concerning those many permits, do not match with

each other. This is the case with the fire safety approval, which, according to BIDA Rules is a required part and parcel of the application package. In practice, often the building the investor will be using for the project has not been constructed yet, and it is as a principle not actually possible to receive a fire safety approval from the relevant authorities until the building has been completed. BIDA officials are normally very reasonable in such situations and a practice has developed recently where the building plans of the to-be constructed buildings will be used to further the matter.

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