



*The “economic miracle of Bangladesh” has in part been fueled by a robust interest by Development Financial Institutions and International Financial Institutions.*

VDB Loi Bangladesh Private Limited exclusively performs non-regulated services in Bangladesh. For Bangladesh law or tax advice, we are represented by licensed Bangladesh advocates or tax professionals in association with VDB Loi.

For more information, get in touch with your regular client contact at VDB Loi or in Bangladesh as follows:



UTC Building, 19<sup>th</sup> Floor  
Unit 1922, 8 Pantho Path  
Karwanbazar, Dhaka 1215  
bangladesh@vdb-Loi.com

T: +880 0 961 188 6739

WhatsApp: +880 (0) 131 742 2535

*This client briefing note is not to be construed as legal advice or marketing. This is information made available to existing clients for their general understanding.*

## BANGLADESH PROJECT FINANCE UPDATE: SOME NEW DEVELOPMENTS AND PRACTICES ON THE LOCAL ASPECTS OF CROSS-BORDER FINANCING IN BANGLADESH

### Introduction

The “**economic miracle of Bangladesh**” has in part been fueled by a robust interest by Development Financial Institutions and International Financial Institutions. The Government has been driving an energy and infrastructure push, and has also put great effort on developing industrial zones. Reason enough to take another, updated look at project finance in Bangladesh.

In the below discussion, we focus mainly on new practices and rules in connection with project financing across sectors.

### **Government approval for foreign loans: Currently, most applications are approved, but there are delays**

All loans in excess of 1 year require approval from the Government. Bangladesh Bank, the central bank, is the primary authority providing this approval, but in fact it is the Bangladesh Investment Development Authority (“**BIDA**”) which receives and processes applications for loan approvals. The application will comprise the facility agreement itself, basic information akin to what one would find on a term sheet, as well as other documents.

Another interesting feature of the application process is that the borrower is expected to demonstrate enough cash flow

### Highlights of this note

- ▶ Introduction
- ▶ Government approval for foreign loans: Currently, most applications are approved, but there are delays
- ▶ New process for updating the borrower credit database
- ▶ Holding and obtaining foreign currency
- ▶ Contractual documentation
- ▶ Security: enforcement of a share pledge now requires cooperation by the pledgor
- ▶ How much debt is allowed and at which interest rate?

sources to meet debt service. Whether that is indeed the case is sometimes a matter of appreciation. Probably the largest document to submit, which will take some time to prepare is the Feasibility Study or Commercial Viability Report. This is essentially an accounting document with projections of the

financial statements and cash flow, plus some analysis, all geared to proving that the borrower will be able to service the loan.

Recently, Bangladesh Bank tends to carefully go along with the projections of the borrower, and mainly focuses on other attributes of the file such as the purpose of the loan and the Credit Information Bureau (“CIB”) clearance (see below).

The entire process can be done in English and is unfortunately usually rather lengthy. We have seen cases where several months were needed, but also cases where the better part of a year went by.

### **New process for updating the borrower credit database**

Typical for Bangladesh is that the borrower’s credit history information is part of the evaluation. A borrower who has earlier defaulted on a loan in Bangladesh is recorded as such by the CIB. A blacklisted borrower would be turned down by the regulator for a foreign loan as well. Foreign lenders can only access such information through the nominated local bank (foreign owned or Bangladesh owned). The local bank is thus an integral part of the application process, certifies that CIB status. The nominated bank is in fact normally the only point of communication with Bangladesh Bank. The borrower may very well know his credit history already, so rejections on this basis should be rare, but we still see this happening.

The CIB check also spots individuals who are blacklisted directors. For example, a corporate borrower may take on a non-suspecting local director from the JV partner, triggering a negative on that borrower/JV company. Or more generally, the way the blacklist works is that a blacklisted director will taint the company he is a director of.

In that regard it is important to know how changes to the board of a borrower company can be made. To do so, there is a new administrative process, recently amended by means of CIB Circular No-2/2021 dated 10 October 2021 (the Circular). Only a bank can start the process to update the board composition of a borrower company. And that can only happen with permission of the other bank or banks involved (the banks the borrower owes money to as well, for example). The requesting bank will need to take the initiative, but in the new Circular the CIB requires the borrower to contact and clear his situation with the other banks right at the outset of the procedure. The minutes of the bank with the board composition change must be signed by the chairman of the board of the bank. This is not likely to speed things up. If there are any personal or corporate guarantors, if they continue, these must all be contributed into the CIB database as well. The process supposedly must be completed within 3 months, or one would have to run it all over again. Changes to the board of directors must also be submitted by the requesting bank in a similar manner.

### **Holding and obtaining foreign currency**

Usually, the foreign exchange operations needed for the financing will be applied for and approved as part and parcel of the foreign loan approval process. In general, purchasing or selling foreign currency in Bangladesh requires special permission, except for some generally permitted operations.

So, if a borrower needs to pay interest and capital to an offshore lender, this requirement is built into the application for the loan. Otherwise, it is not very common for Bangladesh businesses to hold a foreign currency account, for example, although depending on the purpose permission could certainly be granted.

### **Contractual documentation**

Loan documentation may, and frequently is, governed by foreign law even when it concerns Bangladeshi borrowers. There is no requirement to translate English language documentation into Bangla. Security documents would typically be governed by Bangladesh law, although we also see some foreign law share pledges (where the pledgor is a foreign company).

Financing documents are subject to stamping when used in Bangladesh. The rate will depend on the nature of the financing instrument. An unstamped instrument may not be relied upon in a court proceeding until it has been duly stamped. Late stamping triggers hefty penalties.



It is common to see foreign arbitration clauses in financing transactions. Bangladesh is a signatory to the New York Convention. There is indeed a body of case law in Bangladesh related to foreign arbitral awards, much of it in favor of supporting foreign arbitration.

### Security: enforcement of a share pledge now requires cooperation by the pledgor

The most common elements of a security package are mortgages, hypothecations (or charges), and security on shares.

For a lien on shares, most commonly a share pledge agreement is concluded and share certificates may be handed over physically. However, an important new development since this year is that in case of default it may not be possible to actually transfer the shares to the lender or his appointee because the transfer will require the cooperation of the shareholder.

This has been the less than completely uniform practice of the Company Registrar (“**the RJSC**”) for some time now, depending on the area, but this requirement has been built into law since 2021 for all share transfers. A recent amendment to The Bangladesh Companies Act has solidified the process and rendered it more uniform. The important addition has been made by way of the introduction of Section 38(3) (1) which spells out the way how the signature of the share transferee must be confirmed in the transfer deed. It states that “the concerned share transferee must appear in person and re-sign to confirm the authenticity of the share transfer”. If the share transferee is a foreign national

or a non-residential Bangladeshi, the share transfer documents and affidavits in relation to the transfer of shares must be certified by the authorized officer of the relevant High Commission. So, in reality, despite having a share pledge and share certificates, this new amendment may render it harder to enforce and actually transfer the shares.

Mortgages on immovable property will require registration at the land rights registry, the so-called “**Sub-Registrar**” office, which triggers significant tax and fees in the order of 0.1% on the loan amount. It is permitted for foreign lenders to be the mortgagee but in nearly all large financing transactions local banks will act as security agents. A mortgage on an immovable property belonging to a Bangladesh company/borrower will also require registration at the Company Registrar, the RJSC, within the rather short timeframe of 21 days. Failure to register on time means you will need to resort to a lengthy court proceeding.

Hypothecations or charges on movable goods are very common as well in Bangladesh. [fixed and floating charge?]. The hypothecation of a company’s movable assets requires registration of the interest by the RJSC.

### How much debt is allowed and at which interest rate?

For foreign invested borrowers, BIDA will set their debt-to-equity ratio on a case-by-case basis. The recent trend is for BIDA to push for a 70/30 debt-to-equity ratio although much depends on the nature of the project and the industry sector involved. Recently, some projects

have received consideration by BIDA on a case-by-case basis given the special circumstances of their sector.

Until recently, BIDA’s website would in fact state that the maximum interest on foreign loans is “**LIBOR +4.5**”, which was mostly just an indication of the general policy. This mention has now been removed, perhaps in anticipation of the abolishing of LIBOR in the world financial markets. In practice, BIDA and Bangladesh Bank continue to have discretion as to the height of the interest rate. The applicable regulation merely calls for “**reasonable**” interest rates, but recently a practice has developed with some clear “**all-in**” ceilings.

## DOWNLOAD



<https://bit.ly/3Auz28U>

## CONTACT

### Bangladesh

UTC Building, 19th Floor  
Unit 1922, 8 Pantho Path  
Karwanbazar, Dhaka 1215  
T: +880 0 961 188 6739  
WhatsApp: +880 (0) 131 742 2535

### Cambodia

No. 33, Street 294  
(corner of Street 29)  
Sangkat Tonle Bassac  
Khan Chamkarmorn  
Phnom Penh 120101  
T: +855 23 964 430~434  
F: +855 23 964 154

### Indonesia

Plaza Bisnis Kemang  
Suite 211, Jl. Kemang Raya  
No. 2, Jakarta 12730  
T: +62 21 718 3415

The Cityloft Sudirman  
Suite 1119  
Jalan K. H. Mas  
Mansyur Kav. 121  
Jakarta, 10220  
T: +62 21 2555 6611

### Laos

Level 4 Kolao Tower II  
23 Singha Road, Nongbone Village  
Saysettha District, Vientiane, Laos  
T: +856 21 454 679  
F: +856 21 454 674

### Vietnam

Level 16, Unit 1638  
Bitexco Financial Tower  
2 Hai Trieu Street, Ben Nghe Ward  
District 1, Ho Chi Minh City 700000  
Vietnam  
T: +84 708 283 668

### Myanmar

Level 10, Unit 01-05  
Junction City Office Tower  
Corner of Bogyoke Aung San Road  
and 27<sup>th</sup> Street  
Pabedan Township  
Yangon  
T: +951 9253 752~756  
F: +951 9253 758

ParkRoyal Hotel Nay Pyi Taw  
Jade Villa No. 13/14  
Hotel Zone  
Dekhina Thiri Township  
Nay Pyi Taw  
T/F: +95 678 106 089