



KPMG Taseer Hadi & Co.
Chartered Accountants

A Brief on Facilitation to Start-ups, FinTechs and Exports



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Introduction

The State Bank of Pakistan ["SBP"] has issued FE Circular No. 01 of 2021 dated 10 February 2021 ["Circular"] which revises the policy for equity investment abroad by amending para 13 of chapter 20 of the Foreign Exchange Manual ["FEM"].

Objective

The purpose of this Circular is to provide facilitation to Start-ups, Fintechs and Exports. The new policy would allow Pakistani Fintechs and Start-ups to establish holding companies abroad. This new policy further facilitates exporters to establish subsidiaries or branch offices outside Pakistan – These measures, it transpires, have been taken in order to attract foreign direct investment.

Applicability

This Circular shall come into force with immediate effect i.e. 10 February 2021.

This publication contains a synopsis of this Circular dealing only with substituted Para 13 of Chapter 20 of FEM.

The information available in this brief is not intended to be comprehensive. Accordingly, it should not be regarded as being complete source of information on the amended para 13 of chapter 20 of FEM. Users are advised to seek independent professional advice before acting on anything contained herein.

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Chartered Accountants

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Introduction

The FE Circular 01 of 2021 dated 10 February 2021, which substitutes para 13 of chapter 20 of FEM, allows residents of Pakistan including firm to make equity-based investment in entities abroad in the prescribed manner as is shown below.

Basic Terms & Conditions:

The pre-requisite of investment abroad is as under:

- Countries which permit repatriation of profits, dividends and capital qualify for making investment.
- Prior approval of SBP required for making investment in India.
- Proposed investment to be tax cleared and investor to have a clean record of loan repayments.
- No ML/TF related investigation is pending against the applicant

Category- wise specific terms and conditions

The equity-based investments in entities abroad under various categories, shown below, are to be made on following terms and conditions:

[Establishment of subsidiary/branch office by export-oriented companies](#)

General permission is granted to Authorized Dealers ["ADs"] to allow export-oriented entities, in order to boost their exports, to make equity investment abroad to establish/acquire:

- Subsidiary and additional equity injection; or
- Liaison office and remittance of expenses.

The above-stated general permission is subject to the following terms and conditions, namely:

- Annual remittance not to exceed 10% of average 3 years annual export earnings or USD 100,000 whichever is higher.
- Aggregate investment at any point of time not to exceed 80% of its equity.
- Payment to be affected in special foreign currency accounts – in case of deficiency in such account remittance may be allowed from interbank market.
- Export overdue not to be more than 1% of the previous year's exports.
- Annual limit for remitting of annual budgeted expenses is restricted to USD 30,000.
- 10% increase on an annualized basis subject to valid justification.
- One entity per jurisdiction (country) shall be allowed.
- The AD to ensure:
 - export earnings in last 3 calendar years is less than USD 300,000 - AD to obtain details of products to be exported and an undertaking that proposed investment has the potential to increase the exports.
 - The business activity of investee entity is to be of same nature as that of the applicant.
 - Determine financial stability of investor by its audited accounts for the last 3 years, however for I.T. based business, this period may be reduced to 1 year.
 - Verification of documents to determine bonafide of applicant.
 - In case of acquisition of subsidiary abroad, AD to satisfy itself in respect of investee company – where transaction is:
 - o Less than USD 1 million – in such case with respect to valuation of investee company;
 - o More than USD 1 million –examine valuation report issued by accredited business valuation firm of the country.
 - Past track record/performance of previous investment to be given weightage while examining:
 - o New investment request; or

- o Additional capital injection request.

Establishment of Holding Company for raising capital from abroad

The resident company ["OpCo"], having innovative and/ or scalable businesses with potential for high growth to raise capital from abroad on following general permission:

- OpCo allowed to incorporate a holding company ["HoldCo"].
- AD allowed to remit incorporation expenses subject to maximum of USD 10,000.
- After incorporation existing shareholders (individuals/ Companies/ Firms) of OpCo ["Founders"] to swap their shares with the shares of HoldCo within 30 days of incorporation of HoldCo by transferring their holding in OpCo to the HoldCo on repatriation basis.
- No remittance in this regard shall be allowed from Pakistan.
- Resident companies/firms and Founders subsequently may acquire shares of HoldCo payment whereof to be made to OpCo locally in PKR. OpCo will issue shares in favor of HoldCo, on repatriation basis.

The aforementioned general permissions are subject to following terms and conditions:

- The company is incorporated for not more than 7 years.
- Annual revenue to be below PKR 2 billion since its incorporation.
- Equity to be less than PKR 300 million as per latest audited financials.

Funds raised by HoldCo through equity or borrowing are to be remitted as equity-based investment in OpCo in the following manner:

- At least 80% of such funds on annual basis until USD 1 million (net of dividend) is remitted to Pakistan.
- Subsequently, at least 50% of such funds on annual basis until USD 10 million is remitted to Pakistan on cumulative basis.

OpCo to issue shares against amount received from abroad from HoldCo on repatriation basis and report it to SBP.

HoldCo to remit the dividends to Pakistan on shares acquired by resident companies/firms and Founders.

Investment abroad by resident companies/firms

- There is no significant change in this category. Prior permission of SBP is required, as it was before, to make equity-based investment in entities abroad on repatriable basis.

Investment abroad by Resident Individuals

General permission is granted to ADs to effect remittance on behalf of:

- Resident individuals for investments in listed shares on the following terms and conditions:

Maximum	
Amount	Shareholding
USD 25,000 during a calendar year	<u>Not to exceed 1% of shares</u> of the investee company at any time.

- Resident employees of subsidiaries of foreign companies in Pakistan to participate in their share option plans on the following terms and conditions:

Maximum	
Amount	Shareholding
USD 50,000 during a calendar year.	<u>Not to exceed 3% of shares</u> of the investee company at any time.

General permission is granted to resident individuals to acquire the shares of companies abroad as sweat equity for their efforts and services. Maximum shareholding, under this condition not to exceed 20% of shares of the investee company.

Post investment requirements

After making investment investor is required to:

- Provide evidence of establishment/ acquisition within 1 month through AD.
- Make return to SBP on form V-100 within 1 month of investment.
- Submit audited financials of the investee company on annual basis

- Repatriate the dividend/disinvestments proceeds (including capital gains).

Designation and Application processing

Designation of Authorized Dealer

- The applicant will apply to Exchange Policy Department of SBP [“EPD”] for designation of a branch of an AD [“Branch”].
- All investment abroad made under general permission, except for Investment abroad by resident companies/firms, will be routed through Head Office of AD.
- AD/Branch have to ensure compliance of terms and conditions and maintain complete record of repatriation.
- In case of change of designation of an AD/branch NOC will be obtained from existing AD/branch
- The new AD /Branch to be designated to confirm that complete record has been obtained from existing AD/Branch.

Processing of application by AD

- All applications, other than for proposed investment abroad by resident companies / firms, will be processed by AD/Branch.
- Application for any exemption/waiver to be sent to EPD through AD/Branch.
- Proposal for investment abroad by resident companies / firms to be sent to EPD through AD/Branch.

Processing of application by SBP

- All applications, other than for proposed investment abroad by resident companies / firms to be forwarded by AD to EPD.

Contact us

Karachi Office
Sheikh Sultan Trust Building
No. 2
Beaumont Road
Karachi – 75530
Telephone 92 (21) 3568 5847
Telefax 92 (21) 3568 5095
e-Mail karachi@kpmg.com

Lahore Office
351, Shadman–1
Main Jail Road
Lahore 54000
Phone +92 (42) 111 576
484
Fax +92 (42) 3742 9907
e-Mail
lahore@kpmg.com

Islamabad Office
Sixth Floor, State Life Building
Blue Area
Islamabad
Telephone 92 (51) 282 3558
Telefax 92 (51) 282 2671
e-Mail islamabad@kpmg.com

www.kpmg.com.pk

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