

CHAPTER XX

SECURITIES

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1. Definitions.

Section 2 of the Act defines "security" as shares, stocks, bonds, debentures, debenture stock and Government securities as defined in the Securities Act, 1920, deposit receipts in respect of deposit of securities and units or sub-units of unit trusts but does not include bills of exchange or promissory notes other than Government promissory notes. A "foreign security" is defined as a security issued elsewhere than in Pakistan and any security the principal of or interest on which is payable in any foreign currency or elsewhere than in Pakistan. For the purpose of Section 13 of the Act, the term "security" also includes coupons or warrants representing dividends or interest and life or endowment insurance policies.

For the purposes of Section 13 of the Act, the term "a person resident outside Pakistan" covers a foreign national including a foreign national of Indo-Pakistan origin as also a Pakistani holding dual nationality for the time being resident in Pakistan and a company registered in Pakistan which is controlled directly or indirectly by a person resident outside Pakistan. In this connection a reference is also invited to [para 2 of Chapter-XIX](#).

2. Import of Securities.

There are no restrictions under the Act on import into Pakistan of any securities whether Pakistani or foreign.

3. Export of Foreign Securities.

A Pakistan national resident in Pakistan who is, or becomes owner of foreign securities is permitted to hold or retain such securities provided he has acquired them in a manner not involving a breach or violation of the Foreign Exchange regulations. In terms of clause (a) of sub-section 1 of Section 13 of the Act, the taking or sending of any securities to any place outside Pakistan except with the general or special permission of the State Bank, is prohibited. Persons in Pakistan who are holders of foreign securities and who wish to send such securities to banks, brokers or agents abroad for purpose of sale, transfer, etc., should apply to the State Bank through an Authorised Dealer for necessary export licence.

Permission for export of such securities will be granted provided the securities are sent through an Authorised Dealer who should give an undertaking that the securities will be received back in Pakistan within a specified period or in the case of sale, the sale proceeds in foreign currency will be repatriated to Pakistan. State Bank may also consider applications for exchange of foreign shares and/or securities held by residents of Pakistan with Pakistan shares and/or securities

held by residents abroad. Applications for this purpose should be made to the State Bank through an Authorised Dealer or stock and share broker.

4. Export of Pakistani Securities.

Pakistan nationals as also "persons resident outside Pakistan" holding Pakistani securities desirous of sending or taking out the Pakistani securities not covered under the succeeding [paragraphs 6 & 7](#) are required to obtain prior permission of the State Bank. Application for the purpose should be made to the State Bank through an Authorised Dealer.

5. Transfer of Securities to Non-Residents.

In terms of clause (b) of sub-section 1 of Section 13 of the Act, transfer of any security or creation or transfer of any interest in a security to, or in favour of "a person resident outside Pakistan" is prohibited except with the general or special permission of the State Bank. The above prohibition applies to transfer of (i) all Pakistani securities (i.e. securities expressed to be payable in Pakistan currency or registered in Pakistan) whether held by persons resident in or outside Pakistan and (ii) all foreign securities held by Pakistan nationals. Pledging or hypothecation of securities to or in favour of non-residents e.g., as collateral or security for credit facilities abroad, ([see Chapter XIX](#)) or utilizing them for forming trusts or settlements of which a non-resident is the beneficiary is also prohibited under Section 13 of the Act. In the case of securities registered in Pakistan, the companies concerned must obtain permission of the State Bank before registering its transfer in the name of "persons resident outside Pakistan". In terms of Section 13 of the Act, Authorised Dealers are required to obtain permission of the State Bank before purchasing shares or securities registered in Pakistan on behalf of "persons resident outside Pakistan".

6. General Exemption.

The State Bank has granted general exemption from the provision of section 13(1) of the Act in connection with the issue, transfer and export of securities on repatriation basis as mentioned in sub para (B) to those non residents who are covered by sub para (A) provided:

the issue price or purchase price as applicable, is paid in foreign exchange through normal banking channel by remittance from abroad or out of foreign currency account maintained by the subscriber/purchaser in Pakistan, except in case of issue of bonus shares and transfer of shares as stated in sub-paragraph B(v).

The purchase price (whether negotiated privately or otherwise) is not less than the price quoted on the stock exchanges of the country, in the case of listed securities, and the break up value of shares, as certified by a practicing Chartered Accountant, in the case of unlisted securities.

- (A) (I) A Pakistan national resident outside Pakistan.
- (II) A person who holds dual nationality including Pakistan nationality, whether living in or outside Pakistan.
- (III) A foreign national, whether living in or outside Pakistan.
- (IV) A firm (including a partnership) or trust or mutual fund registered and functioning outside Pakistan, excluding entities owned or controlled by a foreign government.

The above exemption applies in the following cases: -

- (I) Issue of shares including Modaraba Certificates/Trust and Fund Units out of new public offers, irrespective of the nature of business of the company.
- (II) Transfer of shares quoted on Stock Exchanges of the country, irrespective of the nature of business of the company.
- (III) Private placement of new/initial shares with foreign investors by a public or private limited company, which is,
- (a) a manufacturing company (for this purpose, power generation companies/energy related infrastructure companies, producers of computer software and companies established to set up software technology parks i.e. technology centres for developing computer Software packages/programs are treated as manufacturing concerns).
- (b) engaged in those activities in Service, Infrastructure, Social and Agriculture etc. Sectors which are open to foreign investors as per prevalent Investment Policy of the Government provided the conditions prescribed therein have been fulfilled and 'Entitlement Certificate' certifying the value of foreign investment obtained from the State

Bank of Pakistan.

- (IV) Transfer of shares of companies covered by sub para (III).
- (V) Transfer of Pakistani securities held by a “ person resident outside Pakistan” on repatriable basis to other eligible ‘persons resident outside Pakistan’ on the same basis against payment outside Pakistan, provided a certificate to this effect is given by the transferee to the company concerned.
- (VI) Issue of rights shares and bonus shares in all those cases where shares are held on repatriable basis by persons resident outside Pakistan in accordance with the general or special permission of the State Bank.
- (VII) Issue of Government securities to persons mentioned in sub-para (A) (III).
- (VIII) Issue/transfer of rupee denominated corporate debt instruments viz. Participation Term Certificates/Term Finance Certificates etc. and Registered WAPDA Bonds as permitted under the relevant SRO governing issue and sale of such bonds.
- (IX) Issue of NIT Units to persons mentioned in sub para (A) (I, II & III).

Companies issuing shares to a ‘person resident outside Pakistan/registering transfer of shares in favour of such persons, in accordance with the exemptions provided in sub paragraphs (A) and (B) and the buyers and the sellers of the shares so issued or transferred are exempted from the operation of restrictions contained in Section 18(1) of the Foreign Exchange Regulation Act, 1947.

7. Procedure for issue of Shares.

(i) Companies issuing shares out of new public offers on repatriable basis, as permitted under sub para (B) (I) of preceding paragraph 6, may open foreign currency collection accounts with banks abroad or in Pakistan for receiving the subscription in foreign currency. They may also allow refunds from these accounts to unsuccessful applicants. The amount subscribed by the successful applicants should be repatriated to Pakistan and foreign currency accounts closed within a week of allotment of shares. Proceeds Realisation Certificate in evidence of subscription money having been repatriated to Pakistan shall be obtained by the company from the concerned Authorised Dealer for submission in original to

the designated Authorised Dealer with the form prescribed at Appendix V- 90.

(ii) In the case of remittance of subscription money directly to Pakistan and its payment to the company's rupee account, shares may be issued for the rupee equivalent paid by the concerned Authorised Dealer as shown in the Proceeds Realisation Certificate (s).

(iii) In case shares are to be issued to non-resident sponsors against the value of plant and machinery supplied by them, an application should be submitted to the area office of the Exchange Policy Department for issue of an Exchange Entitlement Certificate along with the relative import documents viz. original invoices, original bills of entry, copies of bills of lading or airway bills and import permit/import authorisation from Export Promotion Bureau, if applicable. The Exchange Entitlement Certificate will be issued by the State Bank at the average of selected Authorised Dealers' buying and selling rates on the dates of filing of bills of entry with the Customs. Once the Exchange Entitlement Certificate has been issued by the State Bank, the company may issue the shares upto the value mentioned in the Certificate to the non-resident sponsors.

(iv) In case the non-resident sponsors want to pay their contribution to the equity in foreign currency and such payments are retained in a foreign currency account opened with an Authorised Dealer in Pakistan, in terms of paragraph 8 (ii) of Chapter VI of this Manual, the Authorised Dealer concerned will issue a Certificate showing date-wise deposit of equity in the account and its buying exchange rate for the respective currency prevailing on the date on which the amount is credited to the company's foreign currency account. The company may issue shares after receipt of money in its account for the equivalent Rupee amount at the exchange rate shown in the Certificate.

(v) At the request of the company, the State Bank shall authorise an Authorised Dealer for the purpose of remittance of dividend to non-resident shareholders as per procedure outlined in para 14, Chapter XIV of the Manual.

(vi) The shares issued/transferred to non resident shareholders shall be intimated by the company to the designated Authorised Dealer within 30 days of issue/transfer on the form prescribed in App.V- 90 or App.V- 91, as the case may be, alongwith the following documents and other legal documents viz. Memorandum and Articles of Association, Certificate of Incorporation/Registration etc., if not already submitted :-

a) In case of issue of ordinary shares out of public offers under paragraph 6 (B)
(I) Bank's Proceeds Realisation Certificate (PRCs) in original with copy of the

consent/permission of the Securities & Exchange Commission of Pakistan (SECP).

b) In case of issue of ordinary shares through private placement against equity repatriated to Pakistan under paragraph 6 (B)(III)(a) PRCs in original.

c) In case of issuance of shares of companies other than manufacturing under paragraph 6 (B) (III) (b) Entitlement Certificate obtained from the State Bank of Pakistan (Investment Division, Exchange Policy Department) Central Directorate, Karachi by submitting the following through a nominated Authorised Dealer:-

1. Encashment Certificate (EC) and/or Proceeds Realisation Certificate (PRC) from an Authorised Dealer in original showing the amount of foreign currency received and its Rupee equivalent paid to the company. Where the whole or part of the foreign equity is retained in Special Foreign Currency Account the 'Entitlement Certificate' will be issued after the foreign equity contribution has been credited to the foreign currency account of the company.
2. Memorandum & Articles of Association and Certificate of Incorporation.
3. An attested copy of Board of Investment's Registration Letter, if applicable, alongwith confirmation of the company that all required formalities/approvals have since been completed/obtained.
4. Particulars of sponsor shareholders with name, address, nationality, proposed number and face value of shares to be issued.

d) In case of issue of rights shares under paragraph 6 (B) (VI) PRCs in original with copy of Board's Resolution.

e) In case of issue of bonus shares under paragraph 6 (B) (VI) App. V- 91, a copy of Board's Resolution, Auditor's certificate to the effect that issuance of bonus shares is in accordance with the existing applicable laws and the audited accounts for the respective year.

f) In case of issue of ordinary shares against equity contributed in the shape of plant and machinery under paragraph 7 (iii) Exchange Entitlement Certificate issued by the State Bank in original.

g) In case of issue of ordinary shares under paragraph 7 (iv) against equity deposited in a foreign currency account for import of plant & machinery, Account

holding bank's certificate in original.

h) In case of transfer of listed shares under paragraph 6 (B) (II) Stock Broker's Memo and PRCs in respect of the cost of shares and transfer stamp money, both in original. Where the sale of shares is negotiated privately, documents establishing the deal and the price of the share on Stock Exchange on the date of deal, should be furnished.

i) In case of transfer of shares of un-listed companies under paragraph 6 (B) (IV) Auditor's certificate for break-up value in original, a copy of the audited accounts of the respective year, documentary evidence of the agreed sale price and original PRCs in respect of cost of shares and transfer stamp money.

j) In case of transfer of shares from one non-resident to another non-resident against payment outside Pakistan under paragraph 6 (B) (V), certificate from the transferee and PRCs for transfer stamp duty both in original.

k) In case of issue of Government Securities, issue/transfer of debt instruments and issue of NIT Units under paragraph 6 (B) (VII), (VIII) and (IX), PRCs in original with copies of related documents.

(vii) Subject to observance of the procedure outlined above, the companies issuing/registering transfer of shares in favour of non residents on repatriation basis, may export the share certificates through the designated Authorised Dealer to the shareholders. The designated Authorised Dealer shall also allow remittances in respect of the following:-

(I) Dividend, net of applicable taxes, as permitted under Chapter XIV.

(II) Disinvestment proceeds not exceeding the market value (in case of listed securities)/break up

value (in case of unlisted securities) less brokerage/commission on submission of:

- (a) Name and address of the non-resident share holder.
- (b) Name and address of the company whose shares were sold by the non-resident beneficiary, indicating whether it is a listed or unlisted/private limited company and is covered under para 6 ibid. (This requirement may be waived by the Authorised Dealer in case of quoted shares).
- (c) Name, address and residential status of the buyer of the shares in question.
- (d) Copy of broker's memo in case of quoted shares/break up value certificate of a practicing Chartered Accountant in case of unlisted shares.

(viii) The designated Authorised Dealer shall maintain complete record of the shares held by non residents including proof of original investment in foreign exchange and other documents detailed above and shall produce the same for audit by the Inspection Team of the State Bank. No record shall be destroyed unless the same has been audited by the State Bank's inspectors.

8. Issue of Securities and NIT Units to Persons Resident outside Pakistan on non-repatriation basis and its transfer on the same basis.

(i) It is permissible to issue Pakistani Securities of all types including NIT Units but excluding shares of companies not quoted on stock exchange, in favour of persons resident outside Pakistan, on non- repatriation basis, if payment is made either in foreign exchange or in Pakistan rupees provided the securities are registered at the Pakistan address of the purchaser and a clear undertaking is furnished by him that no repatriation of capital and profits/dividends accruing thereon will be claimed at any stage.

(ii) Such securities may also be transferred to a person, whether resident in or outside Pakistan, on the same basis, provided the securities are registered at the Pakistan address of the purchaser and a clear undertaking is given by him that no repatriation of capital and profit/dividend accruing thereon will be claimed at any

stage.

(iii) A person resident outside Pakistan holding shares on non- repatriation basis may also be issued bonus/right shares as per his entitlement, on the basis of non-repatriation of capital and dividend.

9.(a) Trading of Quoted Shares by Non-Residents.

(i) Non-residents are allowed to trade freely in the shares quoted on the Stock Exchanges in Pakistan. For this purpose the non-residents will be required to open "Special Convertible Rupee Account" with any Authorised Dealer in Pakistan. Such accounts can be fed by remittances from abroad or by transfer from a foreign currency account maintained by the non-resident investor in Pakistan. The balance available therein can be used for purchase of any share quoted on the Stock Exchange. Payment for such purchases may be debited to the account on production of stock broker's memo showing sale of shares to the account holder and disinvestments proceeds may be credited provided evidence of the sale price in the shape of stock broker's memo is produced. The fund available in such special accounts can be transferred outside Pakistan or credited to a foreign currency account maintained in Pakistan at any time without prior approval of the State Bank. These accounts can also be credited with dividend income. Transfers from one such account to another may also be made in case of transfer of shares between the two account-holders.

(ii) The commission earned by the international brokers from their overseas clients and credited net of taxes to the broker's SCRA account may be remitted by the Authorised Dealers provided the funds so credited have emanated from inward remittances or paid out of SCRA of the investor.

(iii) Authorised Dealers will be required to submit to the Director, Statistics Department, State Bank of Pakistan, Central Directorate, Karachi a statement in the prescribed proforma (Appendix V- 92) on weekly basis showing the position in respect of SCRA accounts as on each Saturday. The statement should reach the State Bank within two working days from the close of the week to which it pertains.

(b) Trading of Federal Investment Bonds, Pakistan Investment Bonds, Treasury Bills, Registered Corporate Debt Instruments and WAPDA's Registered Bonds listed with Stock Exchange in the Secondary Market.

Non-residents are allowed to trade freely in Federal Investment Bonds (FIBs), Pakistan Investment Bonds (PIBs), Treasury Bills (TBs), Registered corporate debt instruments and WAPDA's Registered Bonds listed with stock exchanges if the relevant S.R.Os permit non-residents to hold the bonds in the secondary market, through Special Convertible Rupee Accounts subject to the instructions applicable to these accounts as contained in the preceding sub-paragraph (a).

10. Special Instructions regarding shares transferred under Central Depository System (CDS) of Central Depository Companies.

(i) General.

Separate account or sub-account will be opened & maintained at CDC for each non-resident investor eligible for investment in registered shares/securities quoted at stock exchange in Pakistan.

It must be ensured that all transactions at CDS i.e., deposit into or withdrawal from the account/sub-account of a non-resident is supported by actual movement of funds. In other words, there should not be any netting/adjustments and payment/receipt in respect of each purchase/sale should be settled independent of other transactions of the non-resident. In case the investment by the non-resident is made/routed through his Special Convertible Rupee Account (SCRA) maintained with an Authorised Dealer in Pakistan, the SCRA should never show an overdrawn position.

(ii) Initial transfer in the name of CDC.

While approving the initial/first-time transfer of shares/securities purchased/held by non-residents, in the name of CDC for deposit into CDS, the company concerned will ensure that the shares are already registered in its record on repatriation basis in the name of the non-resident concerned. If the shares are not already so registered, the company will obtain requisite documents issued in the name of investor concerned, i.e., broker's memo, proceeds realisation certificates (PRCs) for cost of shares purchased and transfer stamp duty, or where the shares have been purchased from another non-resident shareholder against payment outside Pakistan, the transferee's certificate alongwith PRC for transfer stamp duty.

(iii) Subsequent transactions i.e., deposit/withdrawal at CDS.

(a) Where investments are made through GDRs, the Authorised Dealer concerned will continue to ensure that complete/proper record of all transactions is kept at their end and the prescribed statements of SCRA's are furnished to the

State Bank as usual, as at present documents involving such investment would not be required to be submitted to the company at any stage.

(b) In case of investments not involving SCRA, the original documents as listed at (ii) above will be submitted as usual to the respective company by the 'Participant' concerned alongwith a certificate that the shares are in the name of CDS and have since been deposited into/withdrawn from the respective non-resident's account at CDS. The company after making necessary entry in its record to update CDC's non-resident holding, will furnish the same to the designated Authorised Dealer. The Authorised Dealer will keep these documents in its record for onward submission to State Bank in the prescribed manner alongwith returns pertaining to dividend/bonus or right issue and will as usual make the remittance of disinvestment proceeds of such shares subject to the prescribed drill/rules.

(iv) Dividend Payment/allotment of bonus or right shares.

CDC will issue to the respective company a list of beneficial non-resident shareholders certifying their individual holding as on Ex-date of dividend/bonus/right in the form appearing at Appendix V-93. Before issue of dividend warrant or allotment of bonus/right shares, the company will verify the holding of non-residents not involving SCRA's from its record including those as mentioned in sub-para (iii) (b) and for the non-residents investing through SCRA's, it will obtain an undertaking-cum-certificate from the Authorised Dealer concerned on the form appearing at Appendix V-94, and on the basis of this undertaking-cum certificate it will certify Appendix V-50 & V-90 and V-91 for such shares. The aforesaid list provided by CDS will invariably be attached by the company to the aforesaid returns.

11. Investment by branches of Foreign Banks and Foreign Controlled Investment Banks.

Branches of foreign banks in Pakistan and foreign controlled investment banks incorporated in Pakistan are permitted to invest in Pak. Rupee denominated registered listed corporate debt instruments issued in Pakistan, provided such investment is made through initial public offerings and secondary market purchases, and further provided that investment in those debt instruments which are convertible into shares does not exceed 30% of the paid-up capital of the issuing company or 30% of the paid-up capital and reserves of the investing institution, whichever is less. The profit/interest accruing on such investment will be treated as their income for the purpose of profit/dividend remittance.

12. Export and Transfer of Foreign Exchange Bearer Certificates/U.S. Dollar Bearer Certificates/Five Years Foreign Currency Bearer Certificates/Special U.S. Dollar Bonds.

State Bank of Pakistan vide its [Notification No.F.E. 1/92-SB dated the 30th July, 1992 \(App. III-10\)](#) has granted general permission for doing various acts referred to in Section 13 of the Foreign Exchange Regulation Act, 1947 in relation to Foreign Exchange Bearer Certificates issued under the Foreign Exchange Bearer Certificates Rules 1985, U. S. Dollar Bearer Certificates issued under the U. S. Dollar Bearer Certificates Rules 1991 and Five Years Foreign Currency Bearer Certificates issued under Five Years Foreign Currency Bearer Certificates Rules 1992. . The Bank has also allowed vide FE Circular No 42 of 1998 read with FE Circular No 44 of 1998 the export of Special U. S. Dollar Bonds issued to the non-residents.

13. Transfers between Registers etc.

Clauses (c) and (d) of sub-section (1) of Section 13 of the Act prohibit, respectively, transfers of securities from registers in Pakistan to registers outside Pakistan and the issuing, whether in Pakistan or elsewhere, of securities which are registered or to be registered in Pakistan, to "persons resident outside Pakistan" except with the general or special permission of the State Bank.

14. Investment Abroad by Residents.

Residents of Pakistan including firms and companies incorporated in Pakistan were allowed vide FE Circular No. 66 of 1993, to make investment in companies incorporated abroad on repatriable basis through Foreign Exchange Bearer Certificates (FEBCs) subject to the conditions laid down in the circular. Permission for investment in joint ventures other than incorporated companies abroad was also accorded vide FE Circular No. 11 of 1995 against FEBCs. These facilities stand suspended with effect from 29th May 1998 as encashment of FEBCs in foreign currency was stopped. Prior approval of the State Bank is now required for investment abroad by residents. Applications in this connection should be submitted on the prescribed form (App. V- 95) along with the documents mentioned therein to the Investment Division, Karachi through an Authorised Dealer.

15. Registration of Foreign Securities.

Under Section 19(I) of the Act, the Federal Government have issued [Notification No.I\(1\)-2-FE/56 dated the 1st August, 1956](#), (Appendix II-7) requiring all persons

resident in Pakistan who are or become the owners of any security in respect of which the principal, interest or dividends is or are payable in the currency of any foreign country or in respect of which the owner has the option to acquire the payment of principal, interest or dividends in such currencies, to make a return to the State Bank within one month of their acquiring the securities, giving particulars in respect of the said securities. The specimen of the form in which these particulars are required to be furnished in duplicate is given at [Appendix V-96](#). Such a return is not required to be made in respect of the securities mentioned in paragraph 12 *ibid*. Foreign nationals residing in Pakistan are not required to submit the above returns.

16. Under-writing of shares, term certificates and Modaraba certificates by foreign banks.

Underwriting of shares, participation term certificates etc., by foreign banks' branches in Pakistan eventually involves holding of those shares/securities which are not taken up by the general public, and as such attracts the provisions of Section 13(1) of the Foreign Exchange Regulation Act, 1947. Foreign banks' branches in Pakistan have general permission to under-write the issue of shares to the extent of 30% of the public offering or 30% of its own paid-up capital and reserves, whichever is less. They are also permitted to under-write public issues of participation term certificates, term finance certificates and modaraba certificates, provided that where the terms and conditions of issue of such securities grant an option to the holders to convert the securities into ordinary shares, the restrictions of 30% as mentioned above would apply.