

SECURITIES

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CHAPTER 20

SECURITIES

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.

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 Authorized Dealer.

Permission for export of such securities will be granted provided the securities are sent through an Authorized 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 Authorized Dealer.

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 Authorized 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 19) 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, Authorized 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:

- i) 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 and units as stated in sub-paragraph B (v).
 - ii) The purchase price (whether negotiated privately or otherwise) is not less than the price quoted on the stock exchange(s) 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 or net asset value in case of units of funds.
- (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 company or firm (including a partnership) or trust or mutual fund or private fund incorporated, registered and functioning outside Pakistan, excluding entities owned or controlled by a foreign government.
- (B) 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 and units of funds quoted on Stock Exchange(s) of the country, irrespective of the nature of business of the company.
 - (III) Private placement of any class or kind of new/initial shares with foreign investors by a public or private limited company.
 - (a) Omitted
 - (b) Omitted
 - (IIIA) Private placement for issuance of new units of private funds established and operated by Private Fund Management Company licensed by SECP to provide private equity and venture capital fund management services.
 - (IIIB) Issue of units of mutual funds registered as Open End Schemes (OES) under management of Asset Management Companies (AMCs) licensed by SECP to provide asset management services.
 - (IV) Transfer of shares/units covered by sub para (III), (IIIA) and (IIIB).
 - (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 and issuance of additional units as bonus and/or reinvestment of dividends in all those cases where shares/units 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.
 - (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) Omitted
- (C) 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/Units.

(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 Realization Certificate in evidence of subscription money having been repatriated to Pakistan shall be obtained by the company from the concerned Authorized Dealer for submission in original to the designated Authorized Dealer with the form prescribed at Appendix V- 95.

(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 Authorized Dealer as shown in the Proceeds Realization Certificate (s).

(iia) In the case of remittance of subscription money directly to Pakistan and its payment to the fund's rupee account (opened in the name of trustee), private funds may issue units, in terms of paragraph 6(B)(IIIA), for the rupee equivalent paid by the concerned Authorized Dealer as shown in the Proceeds Realization 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, through an Authorized Dealer, to the area office of the Foreign Exchange Operations 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 authorization from Trade Development Authority of Pakistan, if applicable. The Exchange Entitlement Certificate will be issued by the area office of Foreign Exchange Operations Department at the average of interbank 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 area office of Foreign Exchange Operations Department, 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 Authorized Dealer in Pakistan, in terms of paragraph 9 (ii) of Chapter 6 of this Manual, the Authorized Dealer concerned will issue a Certificate of Deposit (COD) 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 authorize an Authorized Dealer for the purpose of remittance of dividend to non-resident shareholders/unitholders as per procedure outlined in para 16, Chapter 14 of the Manual.

(vi) The shares/units issued/transferred to non resident shareholders/unitholder shall be intimated by

the company to the designated Authorized Dealer within 60 days of issue/transfer on the form prescribed in Appendix V- 95 or Appendix V- 96, as the case may be, for onward registration with State Bank of Pakistan, 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 Realization 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) PRCs in original.
- bb) In case of issue of units of funds under paragraph 6(B)(IIIA), PRC in original.
- c) Omitted.
- 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/units under paragraph 6 (B) (VI) Appendix V- 96, a copy of Board's Resolution, Auditor's certificate to the effect that issuance of bonus shares/units 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 area office of Foreign Exchange Operations Department 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, certificate of deposit, issued by Account maintaining bank, 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/units of un-listed companies under paragraph 6 (B) (IV) Auditor's certificate for break-up value or net asset 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/units and transfer stamp money (if applicable).
- j) In case of transfer of shares/units 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 under paragraph 6 (B) (VII) and (VIII), PRCs in original with copies of related documents.
- l) ¹Further, in order to enhance due diligence with respect to export of securities to non -resident investors, Authorized Dealers are required to submit the following documents/information with regard to non-resident investors (where applicable) in addition to the above requirements:
 - i. Formal Share Purchase Agreement or equivalent between the Investor & Investee.
 - ii. Business profile containing ownership, organization/group, locations, markets and products.
 - iii. Promoters'/ Directors' names, addresses, national ID/passport numbers & country of domicile.
 - iv. Certificate of Incorporation or equivalent issued/acknowledged by the relevant Authority.
 - v. Memorandum & Articles of Association or equivalent registered with the relevant Authority.
 - vi. Annual Audited Financial Statements with Auditors' report & notes thereon for the last

¹ EPD Circular Letter No. 06 dated February 24, 2017.

- year.
- vii. Pattern of Shareholders (name, national identity number & shares held) or equivalent.
 - viii. Related Party details including beneficial ownership (as defined by the SECP) with aforementioned documents, if any.

Authorized Dealers shall maintain centralized record/data of all such cases as well as securities of non-residents already registered on the aforementioned parameters along with the details of Investment/ Dividend repatriated and update the same for On-site inspection /Off-site monitoring by SBP.

(vii) ²Subject to observance of the procedure outlined above, the companies issuing/registering transfer of shares/units in favour of non-residents on repatriation basis, may export the share/unit certificates through the designated Authorized Dealer to the shareholders/unitholder. The designated Authorized Dealer shall also allow remittances in respect of the following:-

- (I) Dividend, net of applicable taxes, as permitted under Chapter 14.
- (II) Disinvestment proceeds, less brokerage / commission and taxes, as under:
 - A. For disinvestment proceeds not exceeding the market value (in case of listed securities)/ break-up value (in case of unlisted securities)/ net asset value (in case of units), the designated Authorized Dealer shall allow the remittance on submission and review of:
 - a) Name and address of the non-resident shareholder/unitholder.
 - b) Name and address of the company/fund whose shares/units were sold by the non-resident beneficiary, indicating whether it is a listed or unlisted/private limited company or fund and is covered under para 6 ibid. (This requirement may be waived by the Authorized Dealer in case of quoted shares).
 - c) Name, address and residential status of the buyer of the shares/units in question.
 - d) Copy of broker's memo in case of quoted shares/break-up value certificate of a QCR rated practicing Chartered Accountant in case of unlisted shares/copy of latest quarterly net asset value audited by category A auditor from amongst SBP panel of auditors in case of units.
 - e) Attested copy of executed Share/unit Purchase Agreement (enforceable at law) between resident buyer and non-resident seller, showing rupee value of shares/units purchased.
 - f) Attested copy of latest audited financials of the company/fund whose shares/units were being sold.
 - g) Duly filled/ signed M-Form for the rupee value of the remittance in favor of non-resident.
 - h) An undertaking from the buyer that the transaction is not between related parties. In case the transaction is between related parties, an undertaking that the same has been concluded at an arms-length basis.
 - i) Authorized Dealer will ensure due diligence of the transaction/ buyer from AML/ CFT perspective.
 - B. For disinvestment proceeds exceeding the market value (in case of listed securities)/ break-up value (in case of unlisted securities)/net asset value (in case of units), the designated Authorized Dealer shall allow the remittance after satisfying itself about the genuineness of the transaction by reviewing the following additional documents:
 - a) Detailed justifications/ rationale/ basis of setting the transaction price per share, from the buyer, in original.
 - b) Attested copy of detailed valuation/ transaction due diligence by the buyer showing basis, methodology and key valuation metrics used for valuation of shares/units as per generally accepted best practices for valuation of shares./units
 - c) In case the total remittance of disinvestment proceeds exceeds US Dollar 50 million (or equivalent in other currencies) during a span of six months, the applicant, in addition to

² EPD Circular No. 5 dated October 26, 2020.

above information/ documents, shall also submit an independent/ third party review of the buyer's valuation, from QCR rated practicing chartered accountant as per the latest generally accepted valuation techniques/ methods for a particular type of industry in which resident company/fund is operating. The review report should at least provide view on the appropriateness of the basis and methodology used in the valuation/ transaction due diligence. Further, the review report should also include local/ global comparable transactions and/or trading multiples of comparable publicly traded companies and key valuation metric(s) comparisons, if available.

C. For disinvestment proceeds due to maturity of units of fund, issued in terms of Para 6(B)(IIIA) above, the designated Authorized Dealer shall allow the remittance on submission and review of:

- a) Winding-up report duly verified by external auditor and trustee of fund.
- b) Unitholders investment statement
- c) Distributions statement (including principal repayment)

(viii) ³Authorized Dealers are required to submit electronically, statement showing shares/units registered and held by 'persons/ entities resident outside Pakistan and statement showing issue and export of bonus shares/units to non-resident shareholders/unitholders to the Statistics & Data Warehouse Department of the State Bank on format Appendix V- 95A & 96A at fca.stat@sbp.org.pk by 5th of the following month. Further, the designated Authorized Dealer shall maintain complete record of the shares/units 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 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, 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 and Units of Funds by Non-Residents.

(i) Non-residents are allowed to trade freely in the shares and units of funds quoted on the Stock Exchange(s) in Pakistan. For this purpose the non-residents will be required to open "Special Convertible Rupee Account" (SCRA) with any Authorized 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 or unit of fund quoted on the Stock Exchange(s) of Pakistan. Payment for such purchases may be debited to the account on production of stock broker's memo showing sale of shares or units of fund 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/profit income. Transfers from one such account to another may also be made in case of transfer of shares/Units between the two account-holders.

³ EPD Circular Letter No. 14 dated December 07, 2016.

⁴Non-residents are also allowed to trade in shares in Ready/ Cash/ Futures Markets through SCRA, subject to the following procedure:

- (a) A separate sub-account under SCRA shall be opened by foreign investors through which an investor will route receipts/payments, initial margin, mark-to-market settlement, transaction charges, commission, fees etc.
 - (b) Margins relating to Ready/Cash/Futures may also be routed through this account. However, while allowing refund of the margin through SCRA to a non-resident, the Authorized Dealer should ensure that the broker has quoted the date and instrument number under which the margin was received by them.
 - (c) Authorized Dealers shall report information on market value of foreign investments through future trading in their weekly returns to the Statistics and Data Warehouse Department on the revised proforma (Appendix V-97). The daily statement showing inflow/outflow and opening/closing balances in the SCRA shall however, continue to be reported to the Statistics and Data Warehouse Department on the prescribed proforma Appendix V-97.
- (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 Authorized Dealers provided the funds so credited have emanated from inward remittances or paid out of SCRA of the investor.
- (iii) ⁵Head/ Principal Offices of all Authorized Dealers are advised to submit statements to Statistics and Data Warehouse Department, State Bank of Pakistan in the excel format on daily and weekly basis showing the position of Special Convertible Rupee Accounts (SCRAs) maintained with them by non-resident investors. The format can be downloaded from the following link:

<http://www.sbp.org.pk/Regulatory>Returns/stats.htm>

The above information should be reported to Statistics and Data Warehouse Department, State Bank of Pakistan through email scra@sbp.org.pk.

(B) Investment in Government of Pakistan marketable securities including Pakistan Investment Bonds, Treasury Bills, Registered Corporate Debt Instruments and WAPDA's Registered Bonds listed with Stock Exchange(s).

Non-residents are allowed to invest and trade freely Government of Pakistan marketable securities including 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 SCRAs subject to the instructions applicable to these accounts as contained in the preceding sub-paragraph (A).

(C) ⁶Trading of Quoted Shares and Units of Funds by Non-Residents through NRP Rupee Value Account (NRVA).

(i) In terms of Para 8 of Chapter 8 of Foreign Exchange Manual, Non-Resident Pakistanis (NRPs) have been allowed, inter alia, for investment in the shares and units of funds quoted on the Stock Exchange(s) in Pakistan by using funds available in their "NRP Rupee Value Account (NRVA)" opened with any ADs in Pakistan. For this purpose, the ADs may use the procedure as explained in Para 9(A) above. However, additionally, ADs may allow the NRPs to use the facilities offered by Central Depository Company (CDC) or National Clearing Company of Pakistan Limited (NCCPL) for custody and settlement/clearing of such investment provided that the NRP investor specifically requests for such arrangements. In this regard, ADs are allowed to:

- a. Transfer the funds, available in NRVA of the investor, to the bank account maintained by CDC/NCCPL, for the purchase of any quoted shares or units of fund on the request of NRP

⁴ F.E. Circular No. 10/2006 dated July 21, 2006.

⁵ Circular Letter No. 01/2008 dated January 15, 2008

⁶ Circular No. 03/2020 dated August 5, 2020.

- investor. The CDC/NCCPL will provide the stock broker's memo, showing sale of shares/units to the account holder, to the AD once the purchase transaction is completed.
- b. Credit the un-utilized funds, received from CDC/NCCPL, into NRVA of the investor.
 - c. Credit the amount of dividend/profit income in the NRVA of the investor, received from the shares/units held by the investor, through CDC/NCCPL. CDC/NCCPL will provide evidence of receipt of dividend/profit from the company.
 - d. Credit the amount of disinvestment proceeds in the NRVA of the investor, received from CDC/NCCPL on account of sale of quoted shares/units earlier purchased by non-resident through NRVA or bonus/right shares/units issued thereon. CDC/NCCPL will provide evidence of the sale price in the shape of stock broker's memo.
- (ii) AD will maintain the complete reconciliation of amount transferred/received to/from CDC/NCCPL, shares/units purchased/sold by the investor there against, and ensure the compliance of all related foreign exchange regulations.

(D) Investment in Units of Mutual Funds registered as Open End Schemes (OES)

Non-residents are allowed to invest in units of mutual funds registered as OES under management of Asset Management Companies (AMCs) licensed by SECP to provide asset management services, through "Special Convertible Rupee Account" (SCRA) opened with any Authorized Dealer in Pakistan. Further, the holders of "NRP Rupee Value Account (NRVA)" opened with any ADs in Pakistan, can also invest in these units through these accounts. Such investment can be made in following manner:

- a. The balance available in SCRA/NRVA can be used for purchase of unit of OES and payment for such purchases may be debited to the account on the specific request of investor for onward credit to the bank account of trustee of the OES. The NAV allocated with respect to each investment along with a copy of application and payment instrument/ details shall be provided by the AMC to the AD on the same day. AMC shall also send account statement to the AD within 24 hours of the realization of funds.
- b. In case of conversion of units by the investor from one OES to another OES of the same AMC, the AMC will share the details of the conversion transaction (including all details as reported for redemption in one fund and investment details for investment in other fund) with the banks for their record.
- c. Cash Dividend may be credited to respective SCRA/NRVA received from the Trustee of the OES/AMC and the details of the same shall be shared by the Trustee of the OES/ AMC with the AD. In case where, the investor has issued instructions to re-invest, the additional units will be issued and the details of the same shall be shared with the AD.
- d. Redemption proceeds may be credited to respective SCRA/NRVA, received from trustee of OES on account of sale of units earlier purchased by investor through these accounts or bonus units issued thereon. The details of the same will be shared by the Trustee of OES/ AMC with the AD.
- e. The AD shall ensure that all issuance and redemptions are taking place at prevalent NAV announced publically the relevant AMC.
- f. The AD shall maintain the complete reconciliation of amount transferred/received to/from trustee of OES, units purchased/sold by the investor there against, and ensure the compliance of all related foreign exchange regulations.

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

(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 SCRA maintained with an Authorized Dealer in Pakistan, the SCRA should never show an overdrawn position. ⁷The securities available in account/sub-account may be pledged in favor of National Clearing Company of Pakistan Ltd. in case of non-availability of funds in SCRA to meet margin requirements against purchase/sale transactions of non-resident investors in ready/cash market till settlement of respective transaction.

(ii) Initial transfer in the name of CDC.

While approving the initial/first-time transfer of shares/securities purchased/held by nonresidents, 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 realization 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 Authorized Dealer concerned will continue to ensure that complete/proper record of all transactions is kept at their end and the prescribed statements of SCRAs 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 Authorized Dealer. The Authorized 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-98. Before issue of dividend warrant or allotment of bonus/right shares, the company will verify the holding of non-residents not involving SCRAs from its record including those as mentioned in sub-para (iii) (b) and for the non-residents investing through SCRAs, it will obtain an undertaking-cum-certificate from the Authorized Dealer concerned on the form appearing at Appendix V-99, and on the basis of this undertaking-cum-certificate it will certify Appendices V-54 & V-95 and V-96 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.

⁷ F.E Circular No. 03 dated March 24, 2017.

12. 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.

13. Investment Abroad by Residents.

The residents of Pakistan including firms and companies are allowed to make equity-based investment in entities abroad on repatriable basis, subject to the following terms and conditions and in the manner stipulated below:

I. Basic Terms and Conditions:

Following basic terms and conditions will apply to all categories of investment abroad:

1. Investment abroad is allowed only for those countries that allow repatriation of profits, dividends and capital. However, equity investment in India, shall be subject to prior approval of SBP.
2. The funds proposed for investment should be legitimate and tax paid, and the investor should have a clean record of loan repayments.
3. No ML and TF related investigation is pending against the applicant or its beneficial owner/key management personnel under Anti Money Laundering Act, 2010 or Anti-Terrorism Act, 1997 as amended from time to time.

II. Category-wise specific Terms and Conditions:

Following terms and conditions will apply specifically to each category of Investment abroad:

A. Establishment of subsidiary/branch office abroad by export oriented companies/firms for promoting exports:

- a. In order to facilitate the companies/firms incorporated/registered in Pakistan, in increasing exports of the country by expanding their business offshore, designated Authorized Dealers are granted general permission to allow the following equity investment abroad transactions:
 - i. Establishment/acquisition of subsidiary and additional capital injection in subsidiary.
 - ii. Establishment/acquisition of marketing/ liaison/ representative office abroad and remittance of their annual budgeted operational expenses.
- b. However, this general permission is subject to following terms and conditions:
 - i. Total amount of remittance during a calendar year, under this general permission, should not exceed the 10% of average annual export earnings of last three calendar years of the applicant, or USD 100,000 whichever is higher. Authorized Dealer can also open standby letter of credit to facilitate the offshore entity of the applicant for raising funds from offshore jurisdiction, within this limit.
 - ii. At any point of time, investment abroad of the applicant should not exceed 80% of its equity (after adjusting for investments in subsidiaries/ associates, goodwill, Deferred Tax Assets, receivables from related entities etc.).
 - iii. Transactions shall be carried out by the exporter by utilizing foreign currency funds available to the credit of special foreign currency accounts maintained in terms of applicable Foreign Exchange Regulations. However, if the balance available in its special foreign currency accounts is not sufficient, remittance of balance amount can be allowed from interbank market.
 - iv. The export overdue of intending investor shall not be more than 1% of the previous year's exports.
 - v. The threshold of up to USD 30,000 shall be observed for allowing annual budgeted operational expenses of a marketing/ liaison/ representative office from second year

onward (from date of investment). However, an increase of up to 10% may be allowed in annual budgeted operational expenses in the following years subject to valid justification of increase in expenses by the applicant.

- vi. One entity per jurisdiction shall be allowed for establishment/ acquisition of subsidiary/ marketing/ liaison/ representative office abroad.
- vii. The designated Authorized Dealer shall ensure the following through assessment of relevant information/documents submitted by the applicant, before allowing the transaction under this general permission:
 - a. In case applicant's export earnings during last three calendar years is less than USD 300,000 or equivalent in other currencies, the Authorized Dealer shall obtain details of products to be exported by the applicant and an undertaking that proposed investment has the potential to increase the exports of Pakistan.
 - b. The business activity of the company, firm in which investment is desired to be made should ordinarily be of the same nature as that in which the applicant is already engaged in Pakistan. Proposal for investment abroad in the extended line of business or vertical business integration shall also be considered as similar line of business.
 - c. The investor should be financially sound as shown by its audited accounts for the last three years. In the case of a company in the I.T. business, the condition of three years may be reduced to one year.
 - d. The bonafides of the applicant and the genuineness of the transaction by verifying the necessary documents.
 - e. In case of acquisition of subsidiary abroad, the Authorized Dealer shall allow the transaction after satisfying itself with respect to valuation of the company being acquired. In case the target company is unlisted, and the amount of investment is above USD 1 million, the Authorized Dealer may allow the transaction after satisfying itself through a valuation report from an accredited business valuation firm of the country in which investment is to be made.
 - f. While assessing any request for establishment/acquisition of subsidiary or marketing/ liaison/ representative office abroad, due weightage shall be given to the performance of previous investments abroad, if any, in terms of profit repatriation, increase in exports etc.
 - g. In case of additional capital injection in subsidiary, due weightage shall be given to its previous performance as well as future outlook.

B. Establishment of Holding Company (HoldCo) abroad by residents for raising capital from abroad:

- a. In order to facilitate the resident companies (hereinafter referred as Operating Company or "OpCo"), having innovative and/or scalable businesses with a potential for high growth, to raise capital from abroad, following general permissions are granted:
 - i. OpCo is allowed to incorporate a holding company (hereinafter referred as "HoldCo") abroad. For this purpose, designated Authorized dealers are allowed to remit the initial incorporation expenses, on actual basis but not exceeding USD 10,000 or equivalent in other currencies, subject to condition that the applicant company is eligible as per terms and conditions.
 - ii. After incorporation of the HoldCo abroad, the existing shareholders (individuals/ companies/ firms) of OpCo ("Founders") are once allowed to swap their shares, of equal value, to mirror the shareholding of OpCo in HoldCo, within 30 days, by acquiring shares of HoldCo against transfer of their shareholding in OpCo to the nonresident HoldCo on repatriation basis. However, no remittance in this regard shall be allowed from Pakistan.

- iii. Subsequently, resident companies/firms and Founders are allowed to acquire the shares issued by HoldCo against payment of funds to OpCo locally in PKR. Consequently, the OpCo can issue shares of equal value in favor of non-resident HoldCo, on repatriation basis.

b. These general permissions are subject to following terms and conditions:

1. The company shall be eligible for incorporation of holding company abroad under this general permission, provided that:
 - i. The company is incorporated as a private limited/public unlisted company under the Companies Act, 2017 (erstwhile Companies Ordinance 1984) for not more than 7 years, provided that such entity is not formed by splitting up, or reconstruction of a business already in existence
 - ii. The Company has annual revenue below PKR 2 billion since its incorporation
 - iii. The company has equity (including retained earnings) below PKR 300 million as per latest audited financials
2. HoldCo shall repatriate the funds, raised from abroad, through equity or borrowing, to Pakistan, as equity based investment in OpCo, in following manner:
 - i. At least 80% of the funds raised from abroad on annual basis until USD 1 million (net of dividend remitted by OpCo) is remitted to Pakistan.
 - ii. Subsequently, at least 50% of funds raised from abroad on annual basis until USD 10 million (net of dividend remitted by OpCo) is remitted to Pakistan on cumulative basis.
3. The OpCo can issue shares in favor of HoldCo, against the amount received from abroad, on repatriation basis in terms of provisions of para 6 and 7 of Chapter 20 of Foreign Exchange Manual. The OpCo shall report to SBP within 30 days of issuance of shares through its designated Authorized Dealer, along with details of funds raised by HoldCo.
4. HoldCo shall remit the dividends to Pakistan against shares acquired by resident companies/firms and Founders.
5. Designated Authorized Dealer shall arrange to ensure the compliance of all terms and conditions.

C. Investment abroad by resident companies/firms for expansion of business:

The residents of Pakistan including firms and companies are allowed to make equity based investment (other than portfolio investment) in entities abroad on repatriable basis, with prior permission of State Bank of Pakistan and subject to the following terms and conditions:

- i. Only companies incorporated in Pakistan including foreign controlled companies and firms owned by Pakistani Nationals resident in Pakistan are allowed investment under this category.
- ii. The business activity of the company, firm, joint venture in which investment is desired to be made should ordinarily be of the same nature as that in which the investor is already engaged in Pakistan, or in which the investor has the potential to acquire sufficient expertise from the market for running the business. Proposal for investment abroad in the extended line of business or vertical business integration shall also be considered as similar line of business.
- iii. The investor should be financially sound as shown by its audited accounts for the last three years. In the case of a company in the I.T. business, however, the condition of three years may be reduced to one year.

- iv. The proposal should be economically viable as evidenced from a feasibility report. It should have the potential for future earnings of foreign exchange coupled with other advantages to the country such as employment opportunities for Pakistani nationals and improvement in national human resources.
- v. Funding for the proposed investment abroad shall be allowed from the foreign currency funds available to the credit of special foreign currency accounts maintained by the applicant in terms of applicable Foreign Exchange Regulations. However, in case the applicant does not have any such account or the balance available in its special foreign currency accounts is not sufficient, remittance can be allowed from interbank market.
- vi. The State Bank under the aforesaid guideline would also deal with the proposals emanating from the Public Sector Organizations providing financial services whereas the concerned ministry would deal with the investment proposals from all other public sector organizations.

D. Investment abroad by Resident Individuals:

1. Small Investment by Individuals in Listed companies abroad:

General permission is granted to Designated Authorized Dealers to effect remittance on behalf of resident individuals for investments in shares of listed companies abroad, subject to following terms and conditions:

- i. Designated Authorized Dealer is allowed to remit a maximum amount of USD 25,000 or equivalent during a calendar year, under this general permission, on behalf of a resident individual.
- ii. The maximum shareholding by an individual, in a single investee company, under this general permission, shall not exceed 1% of shares of the investee company at any time.

2. Employee Stock Option Plans

General Permission is granted to Designated Authorized Dealers to effect remittance on behalf of resident employees of subsidiaries of foreign companies in Pakistan to participate in their share option plans, subject to following terms and conditions:

- i. Subsidiaries of foreign companies in Pakistan, shall approach to their designated Authorized Dealer with complete share option plans.
- ii. Designated Authorized Dealer is allowed to remit a maximum amount of USD 50,000 or equivalent during a calendar year, under this general permission, on behalf of a resident individual.
- iii. The maximum stake by an individual, in a single investee company, under this general permission, shall not exceed 3% of shares of the investee company at any time.

3. Sweat Equity

General permission is granted to resident individuals to acquire the shares of companies abroad issued to them as sweat equity against their efforts and services, without any monetary consideration. This general permission is subject to the following terms and conditions:

- i. The maximum shareholding, under this general permission, shall not exceed 20% of shares of the investee company at any time.
- ii. The investor could acquire shares under this general permission against its efforts and services related to the field where the investor has expertise.

- iii. The investor shall submit the agreement, confirming this arrangement, to SBP through its designated Authorized Dealer while reporting this investment, along with its detailed profile showing his/her field of expertise with documentary evidences.

III. Post investment requirements:

After making investment, in terms of these regulations, the investor is required to:

- i. Submit the documentary evidences related to establishment/ acquisition of subsidiary/ branch office/shares abroad, within one month of making the investment, through designated authorized dealer.
- ii. Make a return to State Bank on the prescribed form V-100 through their banker within one month of making the investment;
- iii. Each entity who invested abroad under this policy shall submit audited financials of the investee company to the Authorized Dealer on annual basis.
- iv. Repatriate the dividend/disinvestments proceeds (including capital gains) to Pakistan through normal banking channels. The amounts so received would be converted to local currency by the bank concerned and a Proceeds Realization Certificate in original evidencing the same shall be filed by the owner with the State Bank through its Authorized Dealer. Such amounts shall not be allowed for credit to a Foreign Currency Account or for purchase of Pakistani securities on Repatriable basis.

IV. Designation and application processing:

1. Designation of Authorized Dealer:

- i. All the Investments under the general permission granted for categories of investment abroad mentioned at Para 13(II) A, B & D above, shall be routed through only one branch of an Authorized Dealer to be designated by the applicant. For this purpose, request for designation shall be submitted by the applicant through the Authorized Dealer, intended to be designated, to the Exchange Policy Department of State Bank of Pakistan, for acknowledgement. The request for designation of the branch shall be routed through the Head Office of the Authorized Dealer, where record of all such designations shall be maintained.
- ii. The Authorized Dealer at its relevant branch so designated by the applicant shall be liable to ensure compliance of terms and condition stipulated for each category of investment abroad and maintain complete party wise record of transactions processed by it. The Authorized Dealer shall also maintain at the designated branch the complete record of repatriation of dividend/disinvestment proceeds from investments abroad by its each customer.
- iii. In case applicant desires to change the designated bank/branch, it shall submit an application through the Head Office of bank/branch desired to be designated for the acknowledgment of Exchange Policy Department along with the following :
 - a) NOC from previous designated bank/branch regarding change of designation. The previous designated Authorized Dealer shall be required to issue the NOC and share the record related to investment abroad transactions of the applicant with the new Authorized Dealer, within three working days from the date of request received from the new Authorized Dealer.
 - b) Confirmation from bank/branch to be designated regarding acquisition of complete record, pertaining to previous investment abroad transactions, from bank/branch designated previously.

2. **Processing of application by Authorized Dealer:** The detailed applications along with audited accounts, particulars of Directors/Partners of the investor company/firm (not required in case of individuals), name and address of the foreign company/firm in which investment is desired to be made, its line of business and particulars of its Directors/Partners, shall be forwarded to the

Authorized Dealer. The applications with respect to proposals of investment abroad pertaining to Para 13(II) A, B & D above, shall be processed by the designated Authorized Dealer. In case of any exemption/waiver is required, the application will be forwarded by the designated Authorized Dealer to Exchange Policy Department, State Bank of Pakistan as per procedure detailed below. With respect to proposals of investment abroad pertaining to Para 13(II) C above, applications shall be forwarded by the Authorized Dealer to State Bank of Pakistan as per procedure detailed below.

3. **Processing of application by State Bank of Pakistan:** The detailed applications with respect to Para 13(II) C or any exemption/waiver from Para 13(II) A, B & D shall be forwarded by Authorized Dealers to Director, Exchange Policy Department, State Bank of Pakistan, Karachi, along with its review of the application (against applicable terms and conditions) and specific recommendations. Any application submitted to State Bank without proper review and specific recommendation of the Authorized Dealer would not be entertained.

14. ⁸Investment Abroad by Locally Established Mutual Funds.

(i) Locally established mutual funds are allowed to invest abroad for the purposes of diversification of their asset classes/portfolio, to the extent of 30% of the aggregate funds mobilized (including foreign currency funds), in permissible categories subject to a cap of US\$ 15 million at any given time. The investment made abroad must strictly follow the scope approved by Securities and Exchange Commission of Pakistan (SECP) and subject to all other terms and conditions as specified for the operations and investments abroad by SECP.

(ii) Such funds would need prior approval of State Bank. In this regard, each interested locally established mutual fund is required to apply, through an Authorized Dealer, to the Director, Exchange Policy Department, State Bank of Pakistan by providing details of the proposed operations alongwith the related documents. Each request will be evaluated on a case to case basis and will be responded accordingly.

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-100. 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.

⁸ F.E. Circular No. 11 dated August 12, 2005.