

Government of the People's Republic of Bangladesh  
Ministry of Finance  
Financial Institutions Division  
Central Bank Branch

NOTIFICATION NO. FID....

DATE : ..... \*\*, 2020

In exercise of the power conferred under Section 27 of Foreign Exchange Regulation Act, 1947, Government being considered it necessary in the interest of country's economy and business for the purpose of sub-section (6) of Section 4 of the said Act, makes the following rules, for the capital account transactions.

**1. Short title and commencement**

- (1) These rules may be called the "Capital Account Transaction (Overseas Equity Investment) Rules, 2020;"
- (2) The Rules shall come into effect on ..... \*\*, 20\*\*.

**2. Definitions**

In this Rules, unless the context otherwise requires.

- (1) "Anti Terrorism Act (Act No. XVI of 2009) as amended by Anti Terrorism (Amendment) Act 2012 (Act No. VI of 2012)" means an act to provide for office for prevention of terrorist acts and for effective punishment for the offence;
- (2) "Authorized Dealers" means a person for the time being authorized under section 3 of Foreign Exchange Regulation Act, 1947 to deal in foreign exchange;
- (3) "Capital Account Transactions" means the transactions defined in section 2(aa) of Foreign Exchange Regulation Act, 1947 (Act no. VII of 1947) (as amended) or any amendment made thereof;

- (4) “Exporter's Retentions Quota (ERQ) Account” means foreign currency account which may be opened and maintained by the exporter in accordance with Chapter 13, Section (iv) of the Guidelines for Foreign Exchange Transactions, 2018 or any circular issued by the Bangladesh Bank thereafter in this regard;
- (5) “Foreign Currency” means any currency other than Bangladesh currency;
- (6) “Government” means the Financial Institutions Division, Ministry of Finance, Government of Bangladesh;
- (7) “Investment Applicant Entity” or “the Applicant” means an entity formed, registered or incorporated in accordance with the laws and regulations of Bangladesh;
- (8) “Investment Destination” means a foreign country or territory in which a subsidiary company is registered or incorporated by a Bangladeshi entity;
- (9) “Investment Outside Bangladesh” means equity investment abroad to incorporate a subsidiary or to purchase shares in full or with controlling interest of a foreign entity abroad;
- (10) “Money Laundering Prevention Act, 2012 (Act No. V of 2012)” means an Act to provide law for prevention of money laundering and related offence and punishment of offences;
- (11) “Overseas Equity Investment” means Foreign Direct Investment made by Bangladeshi investment applicant entity to form subsidiary company abroad;
- (12) “Subsidiary Company” means a foreign entity formed, registered or incorporated in accordance with the laws and regulations of the foreign country, which is entirely owned or controlled by the Bangladeshi entity.

### **3. Application for overseas investment and cancellation of approval**

- (1) The investment applicant entity shall apply to Bangladesh Bank seeking permission to make investment abroad in equity of a company and to make payment in any appropriate form mentioned in clauses (a) to (e) of sub-section (1) of section 5 of the Foreign Exchange Regulation Act, 1947.
- (2) Bangladesh Bank in consultation with the Government reserves the right to approve or decline any investment proposal and also suspend/cancel the permission granted earlier for breach of terms and conditions of approval and contravention of the Foreign Exchange Regulation Act, 1947 and Rules made thereunder and the reasons for such suspension or cancellation are to be recorded after giving the applicant an opportunity of being heard.

### **4. Eligibility of the investment applicant entity**

- (1) Permission may be given to effect payment for investment abroad by investment applicant entity which is an exporter with adequate balance in its Exporter's Retention Quota (ERQ) account.
- (2) The applicant entity has to be financially sound as evidenced by its audited accounts for the immediate past five years.
- (3) The applicant entity shall have clean track record and must furnish documents from the relevant agencies in respect of
  - a) repatriation of export proceeds within the statutory period or such extension as permitted by Bangladesh Bank;
  - b) discharge of import obligations, for example, having no bill of entry unmatched including local payment against inland back to back letters of credits;
  - c) loan repayment in the financial system and having no unresolved restructured large loan;

- d) No customs duties, VAT and income tax payment are due.
- (4) The credit rating of the applicant shall be at least 2 as per mapping in Basel III Guidelines of Banking Regulation and Policy Department of Bangladesh Bank.
  - (5) The investment proposal for business activity abroad shall generally be of similar nature or complementary or supplementary to the activities that the applicant entity is engaged in Bangladesh.
  - (6) The investment proposal shall be economically viable as evidenced by a trustworthy feasibility report. It shall have potential for future earnings of foreign exchange coupled with the prospect of advancing other advantages for the country, such as enhancement of export from Bangladesh, employment opportunity for Bangladeshi nationals etc.
  - (7) The applicant entity shall have human resources having expertise in global trade operations, finance and investment.

#### **5. Ceiling of equity investment**

Proposal of investment outside Bangladesh shall not exceed 20 (twenty) per cent of its average annual export earnings of the applicant during the previous five years or 25 (twenty five) per cent of the **net worth** as per its last audited balance sheet, whichever is lower, subject to availability of the fund in the applicant's ERQ accounts.

#### **6. Eligibility criteria for investment destination**

The proposal of Bangladeshi investment application for investment abroad may be considered preferably in the countries mentioned under sub-rules(1) to (4) below but expressly excludes countries mentioned in sub rules (5) to (7) below

- (1) where there is no restriction for Bangladeshi nationals to work and repatriate their earnings to Bangladesh;
- (2) with which Bangladesh has a Double Taxation Avoidance Agreement;

- (3) where investment from Bangladesh and repatriation of capital including capital gain, dividend and other admissible earnings such as technical know-how fees, royalty, consultancy fees, commission or other entitlements are allowed;
- (4) with which Bangladesh Government has entered into an agreement on Promotion and Reciprocal Protection of Investment;
- (5) against which sanctions have been imposed by the United Nations (UN), European Union (EU), Office of Foreign Assets Control (OFAC) **etc.;**
- (6) which has been identified in Financial Action Task Force (FATF) Public Statements as Jurisdictions for which a FATF call for action applies by FATF;
- (7) with which Bangladesh has no diplomatic relationship.

In case of conflicting situation arising with regards to investment laws between home and foreign country, Bangladesh Bank in consultation with the Government will take decision in line with international best practices.

## **7. General terms and conditions**

Authorized Dealer (AD) banks, the investment applicant entity, and the subsidiary have to comply with under mentioned terms and conditions in particular but not exclusively:

- (1) Fund shall be remitted in favor of **subsidiary Company** and deposited in its bank accounts; however, for purchasing the share of an existing overseas company, the fund shall be remitted in favor of transferor of shares. In terms of remittances of fund, the concerned bank shall preserve the evidence of all the documents related to overseas investment for ready reference and also for inspection as and when Bangladesh Bank and concerned Government agencies ask for the same;

- (2) The initial capital outflow for the purpose of establishing the company abroad must be repatriated within a reasonable time period as decided by Bangladesh Bank at the time of making decision about the application;
- (3) If, for any reason, the proposed investment does not take place, the fund shall be repatriated without any delay. The procedures shall be determined by Foreign Exchange Investment Department, Bangladesh Bank.
- (4) No loan can be granted by the Bangladeshi owned company to others, excepting trade credit arising out of normal trade transactions;
- (5) Prior permission of Bangladesh Bank is required in case of reinvestment of earnings/dividend/sale proceeds of shares and residual amount in the event of liquidation of subsidiary;
- (6) The company shall not indulge in activities which may tarnish the image of the country;
- (7) The subsidiary company must follow the zero-tolerance policy in case of money laundering, terrorist financing, derogatory comments and behavior to the local culture and religion, racial activities and statements by the management and employees;
- (8) All dues receivable from the subsidiary abroad like dividend, salary, royalty, technical know-how fees etc. shall be repatriated to Bangladesh within 90 days of these falling due, or within such further period as determined/ extended by Bangladesh Bank;
- (9) The proposal shall be for equity investment in subsidiary company to be incorporated abroad or in foreign established entity in which the Bangladeshi applicant entity will acquire shares in full or with controlling interest;
- (10) The company established abroad shall take all necessary steps to employ maximum number of Bangladeshi nationals at all levels of workforce and management and the

percentage of such Bangladeshi employees cannot be less than 30 percent of the total workforce at any time.

- (11) A business environment report highlighting the latest social, economic, political and environmental development which may pose threats to or bring opportunities for the company should be submitted to Bangladesh Bank (**time frame**).

### **8. Penalty for misuse of fund**

The investment applicant entity shall repatriate to Bangladesh any and all fund transferred or remitted from Bangladesh and/or surplus including dividend, royalty, technical know-how fee, commission, consultancy fee, marketing fee etc., if any, created from that transferred or remitted fund through investment or business abroad. If any applicant firm or company fails to repatriate the funds as per terms and conditions of the permission or otherwise, such a failure shall constitute diversion of fund which is an offence of money laundering punishable under the Money Laundering Prevention Act as well as contravention of provision of Foreign Exchange Regulation Act in force and the shareholder/owner, the directors and the beneficial owners and persons in the management of the applicant firm/company shall be liable for such offence(s) and to be punished under aforesaid Acts. In addition, the said fund shall be recoverable by Bangladesh Bank from the applicant entity, its owners, directors, beneficial owners and persons in its management.

### **9. Power of the Bangladesh Bank to issue circulars/guidelines**

The Bangladesh Bank, in the public interest, at any time, can issue circulars/guidelines under these Rules.

Ordered by the Honorable President

(Md. Jehad Uddin)  
Deputy Secretary