

Legal Requirements for setting up of Foreign Company, a branch or liaison office by a Foreign Company in Pakistan, Remittance of Profits & Taxation of Foreign Companies/Branch offices



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

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1. INTRODUCTION OF SMEDA

The Small and Medium Enterprise Development Authority (SMEDA) was established with the objective to provide fresh impetus to the economy through the launch of an aggressive SME development strategy. Since its inception in October 1998, SMEDA had adopted a sectoral SME development approach. A few priority sectors were selected on the criterion of SME presence. In depth research was conducted and comprehensive development plans were formulated after identification of impediments and retardants. The all-encompassing sectoral development strategy involved overhauling of the regulatory environment by taking into consideration other important aspects including finance, marketing, technology and human resource development.

After successfully qualifying in the first phase of sector development SMEDA reorganized its operations in January 2001 with the task of SME development at a broader scale and enhanced outreach in terms of SMEDA's areas of operation. Currently, SMEDA along with sectoral focus offers a range of services to SMEs including over the counter support systems, exclusive business development facilities, training and development and information dissemination through a wide range of publications. SMEDA's activities can now be classified into the three following broad areas:

1. Creating a Conducive Environment; includes collaboration with policy makers to devise facilitating mechanisms for SMEs by removing regulatory impediments across numerous policy areas
2. Cluster/Sector Development; comprises formulation and implementation of projects for SME clusters/sectors in collaboration with industry/trade associations and chambers
3. Enhancing Access to Business Development Services; development and provision of services to meet the business management, strategic and operational requirements of SMEs.

SMEDA has so far successfully formulated strategies for sectors, including fruits and vegetables, marble and granite, gems and jewelry, marine fisheries, leather and footwear, textiles, surgical instruments, transport and dairy. Whereas the task of SME development at a broader scale still requires more coverage and enhanced reach in terms of SMEDA's areas of operation.

Along with the sectoral focus a broad spectrum of services are now being offered to the SMEs by SMEDA, which are driven by factors like enhanced interaction amongst the stakeholders, need based sectoral research, over the counter support systems, exclusive business development facilities, training and development for SMEs and information dissemination through wide range of publications.

2. ROLE OF SMEDA LEGAL SERVICES CELL

The Legal Services Cell (LSC) is a part of Business Development Division of SMEDA and plays a key role in providing an overall facilitation and support to SMEs. The LSC provides guidance based on field realities pertaining to SMEs in Pakistan and other parts of the world. LSC believes that information dissemination among the SMEs on the existing regulatory environment is of paramount importance and it can play a pivotal role in their sustainable development.

In order to facilitate SMEs at the Micro Level LSC has developed user-friendly systems, which provide them detail description of the Laws, and Regulations including the process and steps required for compliance.

The purpose of this document is to provide SMEs, Service Providers, Companies and Firms with information pertaining to setting up of a foreign company, a branch or liaison office of a foreign company in Pakistan.

3. DISCLAIMER

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1. Government Permissions required for setting up industries in Pakistan

No permission from the Government is required in Pakistan for setting up industries in Pakistan, except following:

- Arms and ammunitions
- High Explosives.
- Radioactive substances
- Security Printing, Currency and Mint.
- New unit for the manufacturing of alcohol, except, industrial alcohol

2. Foreign Company

I. **Definition:** As per the Companies Act, 2017, “foreign company” means any company or body corporate incorporated outside Pakistan, which—

(a) has a place of business or liaison office in Pakistan whether by itself or through an agent, physically or through electronic mode; or

(b) conducts any business activity in Pakistan in any other manner as may be specified;

II. Requirements to Establish a Place of Business by a Foreign Company

A foreign company which wants to do business in Pakistan (other than the one which wants to operate through a branch office only) has to fulfill following obligations under the Law:

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A. Registration with Securities and Exchange Commission of Pakistan (SECP)

Under the Companies Act, 2017, a foreign company i.e. a company incorporated or formed outside Pakistan, is required to deliver the following documents to the concerned Registrar of SECP within 30 days of the establishment of its place of business in Pakistan:

- A certified copy of the charter, statute or Memorandum and Articles of the company in the English or Urdu languages accompanied by prescribed Form 38;
- Address of the registered or principal office of the company on Form 39;
- A list of Directors, the Chief Executive and Secretaries (if any) of the company on Form 40;
- Particulars of the principal officer of the company in Pakistan on Form 41;
- Particulars of person(s) resident in Pakistan authorized to accept services on behalf of the foreign company on Form 42;
- Address of the principal place of business in Pakistan of the foreign company on Form 43.

S. No.	Description	Fee	
		Online Submission	Physical Submission
1.	For filing, registering or recording a document containing charter/statute/ memorandum and articles, etc. for registration by a foreign company under the Ordinance required or authorized to be filed, registered or recorded a fee of	25,000	50,000
2.	For filing, registering or recording any document notifying particulars relating to a mortgage/charge or other interest created by a company, or any modification therein or satisfaction thereof, a fee of....	5,000	7,500

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3.	For filing, registering or recording any document other than that at Sr. No. (2) above, required to be filed registered or recorded under the Ordinance or making a record of any fact under the Ordinance, a fee of	600	1,200
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2. REGISTRATION WITH BOARD OF INVESTMENT (BOI)

Following is the criterion laid down by the BOI for foreign companies operating through their branch/liaison office in Pakistan:

- Foreign companies that intend to undertake export activities in Pakistan will be registered without any formality.
- Permission to companies engaged in contractual obligations of contracts with public sector entities will be granted on production of valid documents without circulating to government departments,
- Companies that wish to open their branch/ liaison or representative offices in Pakistan may apply to Board of Investment (BOI) for permission on prescribed form. The BOI will process and decide such cases within a period of 6 to 8 weeks.
- Details on the required documentation, etc, are available at all offices of BOI.
- Permission for opening of branch/ liaison office may be granted by the BOI for a period of 1 to 5 years. Further extension will be granted by the BOI after reviewing and examining the past performance of foreign companies. Request for renewal or extension will be processed by the BOI with two weeks provided the requests are supported with complete documentation.
- Remittance of profits etc., may be allowed to Branch Offices subject to submission of information/documents as required in terms of Para 13, Chapter XIV of the Foreign Exchange Manual of State Bank of Pakistan. However, Liaison office may not be allowed.

2.1. Fees Charged by Bo1

Effective 1.1.2017, the BoI is charging following fees on the services being rendered by it:

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Sr. No.	Category	Fees
1.	Sub-office of Branch Office	US\$ 1500
2.	Sub-office of Liaison Office	US\$ 1000
3.	Air Port Entry Pass	US\$ 100
4.	Urgent Provisional Security Clearance of Foreign expatriates	US\$ 100
5.	Work Visa	US\$ 100

3. Remittance of Profits by Foreign Banks/Companies.

Following is the procedure prescribed by the State Bank of Pakistan for the transfer of money from Pakistan to any other country.

a) Remittances by Banks

(i) Applications from branches of foreign banks operating in Pakistan for remittance of profits to their Head Office abroad should be made to the State Bank on prescribed Form 'M' duly supported by the following information/documents: -

- a) Audited Balance Sheet and Profit & Loss Account of the branch(es) in Pakistan.
- b) Tax provision made during the year for (a) the current year and (b) for the prior years along with its computation.
- c) A certificate from the auditors in Pakistan that tax provision made in the accounts is sufficient to meet all tax liabilities in Pakistan, or copies of final assessment orders and forms duly certified by the Income Tax Department.
- d) Assessment orders for the previous years, if not submitted earlier to the State Bank.

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- e) Certificate from the auditors showing the liability for staff gratuity as at the close of accounts and provision made there-against. If no provision has been made, reasons thereof.
- f) Details of other/miscellaneous income.
- g) Amount charged/claimed on account of Head Office expenses for the current year (if not separately shown in the accounts) and the basis of its calculation along with Head Office expenses claimed/allowed by the Income Tax Authorities for the preceding 3 years.
- h) Provision made in the current year for classified assets.
- i) Confirmation to the effect that the amount provided for classified assets is not less than the amount required to be provided on the basis of the Prudential Regulations of the State Bank.
- j) Item-wise details of un-realized/accrued income credited to Profit & Loss Account for the year and in the previous year.
- k) Item-wise details of un-realized/accrued income of the previous years realized in the current year.

b) Remittances by Companies / branch offices

- (ii) Applications for remittance of net remittable profits by the branches of foreign companies other than banks, operating in Pakistan to their Head Offices abroad should be submitted on Form 'M' supported by the following information/documents: -

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- a) Audited Balance Sheet and Profit & Loss Account of the branch(es) in Pakistan.
- b) Audited Consolidated Balance Sheet and Profit & Loss Account of the Head Office. If they are not available at the time of making the applications, they should be submitted subsequently.
- c) Reconciliation of the Head Office Accounts.
- d) Tax provision made during the year for (i) the current year and (ii) prior years along with its computation.
- e) A certificate from the auditors in Pakistan that tax provision in the accounts is sufficient to meet all tax liabilities in Pakistan or copies of final assessment orders and forms duly certified by the Income Tax Department.
- f) Assessment orders for the previous years, if not submitted earlier.
- g) Certificate from the auditors showing the liability for staff gratuity as at the close of accounts and provision there against. If no provision has been made, reasons thereof.
- h) Details of other/miscellaneous income.
- i) Amount charged/claimed on account of Head Office expenses for the current year (if not separately shown in the accounts) and the basis of its calculation along with Head Office expenses claimed/allowed by the Income Tax Authorities for the preceding 3 years.

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- j) Full particulars of additions, if any, made to fixed assets in Pakistan, during the period and the source of funds utilized for financing such additions.
 - k) The extent to which the proposed remittance will require bank finance.
 - l) In case the applicant is applying for the first time, documentary evidence to the satisfaction of the State Bank that the applicant firm was in existence and conducting business operations in Pakistan prior to 3rd October, 1963. In respect of those branches of foreign firms and companies which were established in Pakistan on or after 3rd October, 1963, original or photocopy of the letter of the Investment Promotion Bureau/Board of Investment, Government of Pakistan, granting them permission to conduct business operations in Pakistan, should be submitted with the application along with other documents.
- (iii) A company other than a bank, insurance company, airline and shipping company desiring to avail the facility of making remittance of profit without prior approval of the State Bank, may approach the Joint Director (Investment Division), Exchange Policy Department, State Bank of Pakistan, Central Directorate, Karachi disclosing the name of its banker through whom it would like to make remittance. The State Bank will authorize the bank concerned to effect remittance of profit to the Head Office abroad of the company subject to verification of the remittable amount in the manner prescribed by it. While reporting such remittances, the designated authorized dealers will enclose all the relevant documents with the relative Form 'M'.

Taxation on Foreign Companies

Foreign companies may be subject taxes like income tax, as sales tax, central excise duty and customs duty in Pakistan unless they have been granted exemption by the

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competent authorities from the applicability of these taxes. However, under the income Tax Ordinance, 2001, where double taxation treaties have been signed between the two countries, provisions contained in the double taxation treaty will be applicable for the purposes of income taxation of companies / firms operating in respective countries.

Avoidance of Double Taxation

Countries Having Agreement With Pakistan For Avoidance Of Double Taxation

S.No.	Name of Country	S.No.	Name of Country
1	Austria	27.	Malta
2.	Bangladesh	28.	Mauritius
3.	Belarus	29.	Netherlands
4.	Belgium	30.	Nigeria
5.	Canada	31.	Norway
6.	China	32.	Oman
7.	Denmark	33.	Philippines
8.	Finland	34.	Poland
9.	France	35.	Qatar
10.	Germany	36.	Romania
11.	Greece	37.	Saudi Arabia
12.	Hungary	38.	Singapore
13.	India	39.	South Africa
14.	Indonesia	40.	Sri Lanka
15.	Iran	41.	Sweden
16.	Ireland	42.	Switzerland
17.	Italy	43.	Syria
18.	Japan	44.	Thailand
19.	Jordan	45.	Tunisia
20.	Kazakhstan	46.	Turkey

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21.	Kenya	47.	Turkmenistan
22.	Republic of Korea	48.	U.A.E.
23.	Kuwait	49.	U.K.
24.	Lebanon	50.	U.S.A.
25.	Libyan Arab Republic	51.	Uzbekistan
26.	Malaysia	52.	Azerbaijan