

বাংলাদেশ



গেজেট

অতিরিক্ত সংখ্যা

কর্তৃপক্ষ কর্তৃক প্রকাশিত

শনিবার, মার্চ ২০, ২০২১

Bangladesh Investment Development Authority

Prime Minister's Office

Circular

Date : 03 March, 2021

Subject : Guidelines for Outward Remittance Repatriation for Payment of Royalty, Technical Knowledge/Technical Know-how Fee(s), Technical Assistance Fee(s), and Franchise Fee(s)-2020.

No. 03.08.2680.224.165.1479.2017/59—This Guidelines is issued in pursuance of Section 18 of the 'Bangladesh Investment Development Authority Act 2016'; 'Foreign Exchange Regulation Act 1947' amended in 2015; and related instructions described in the 'Guidelines for Foreign Exchange Transactions 2018' (read with subsequent amendments) of Bangladesh Bank along with Foreign Exchange (FE) Circular No. 42 Dated November 29, 2017 of Bangladesh Bank in order to serve the purpose of clarifying processes and procedures for outward remittance repatriation for payment of royalty, technical knowledge/technical know-how fee(s), technical assistance fee(s), and franchise fee(s) by private industrial enterprises registered in Bangladesh (with 'Registrar of Joint Stock Companies and Firms' as well as with BIDA) and as defined in Section 15(3) of the Bangladesh investment Development Authority Act 2016.

(৬৯০১)

মূল্য : টাকা ১৬.০০

The industrial enterprises, so described, shall follow the processes and procedures described in this Guidelines for payment of royalty, fee(s) for technical knowledge/technical know-how or technical assistance, and franchise fee(s) to foreign collaborator/organization/company in accordance with the definitions and manners as follows.

1.0 Definitions

a. Authorized Dealer (AD) Bank

An Authorized Dealer bank is the branch(es) of scheduled bank in Bangladesh that has received authorization from the Bangladesh Bank to act as a dealer involved in trading of foreign currencies for specified purposes.

b. Advance Fee(s)

Advance Fee(s), for this Guidelines, may mean the amount of money paid in advance (in part or in full against the appropriate invoices) against the agreed services expected to be delivered in the manner of technical assistance, technical knowledge/know-how, royalty and/or franchisee fee(s) in favor of a collaborator company outside Bangladesh during the implementation stage of a business where commercial operation has not started yet or no capital machinery have so far been imported.

c. Affidavit (for adjustment of Advance Payment)

An Affidavit, in connection with this Guidelines, will be a statement of facts and promise made by an applicant company under oath (certified by a notary public), meaning to make a formal promise to be used in a court or by another official institution (such as a bank) that confirms that the approval of advance outward remittance payment is received from BIDA for the purpose of the concerned business setup processes only and the amount remitted as advance fee(s) will be brought back from the concerned foreign collaborator or will be deposited with foreign currency equivalent BDT in their bank account from where the fund was initially parked by the applicant company and within the time decided by BIDA in case the facts stated appears to be false and/or the business does not start its commercial operation as committed.

d. Arm's Length Transaction

The arm's length transaction, also known as the Arm's Length Principle (ALP) indicates a transaction between two completely independent and willing parties in which both parties are acting in their own self-interest. Such transaction is based exclusively on fair market value.

e. **Bank Guarantee**

A bank guarantee is a promissory note from a bank or other lending institution confirming that if a particular company being a party to agreement defaults on a commitment, the bank will make good of that commitment. In this case a letter of credit might not be accepted as a bank guarantee.

f. **Beneficiary Organization**

A legally competent party and company registered outside Bangladesh who has signed an agreement with a company registered in Bangladesh for the purpose of providing to the later various services of technical nature in exchange of agreed amount of fee(s), or providing permission to allow their brand names to be used by the later in exchange of a once-only franchisee fee(s) and/or a royalty fee(s) for approved period, wherever if applicable.

g. **BIDA**

BIDA means the Bangladesh Investment Development Authority formed by the Bangladesh Investment Development Authority Act 2016.

h. **Brand name**

Brand name is a name given by the producer company and/or the maker to a product or range of products, especially a trademark for the purpose of uniquely identifying the product in the market. The name shall be recognized by the appropriate law of the country.

i. **C&F Value**

Cost and Freight (C&F) is a term of sale/trade signifying that the price invoiced or quoted by a seller for a shipment does not include insurance charges, but includes all expenses up to a consented port of destination.

j. **Collaborator**

Same as Beneficiary Organization.

k. **Contract**

For the purpose of this Guidelines, contract will mean a negotiated and legally enforceable (in a court of law) understanding and/or agreement between two or more legally competent parties (e.g., between a company registered in Bangladesh and a company registered outside of Bangladesh

in this case) for the payment of various fee(s) (in accordance with the section 18 of BIDA Act 2016 and associated orders) to be remitted by the company registered in Bangladesh in favor of the later. The agreement must be signed and vetted properly by the legal representatives of the parties of the agreement in due place, initialed in every page of the agreement by the signatories, and observing due requirements of the law of the country. Any page of the agreement without the signature of both the parties may not be considered as a legal part of the agreement. The agreement must include, but not limited to, (i) the purpose of payment of fee(s), (ii) the scopes and justification of the fees for the benefit of the recipient organization, (iii) conditions of the fee(s) becoming payable, (iv) amount and/or calculation basis of the fee(s), (v) payment schedule of the fee(s), (vi) the validity period of the agreement as well as (vii) the activities to be undertaken with delivery schedule and acknowledgement procedure of the agreed services.

l. Copyright

Copyright is a legal term used to describe the rights that creators have over their literary and artistic works that provides exclusive publication, distribution, and usage rights for the creators. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps, and technical drawings.

m. Design

Means only the features of shape, configuration, pattern or ornament applied to any article by any value creation process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark as defined in section 478, or property mark as defined in section 479 of the Penal Code.

n. Contractor

A person or firm that undertakes a contract to provide materials or labor or to perform a service or do a job which may include Engineering, Procurement, and Construction (EPC) or any other activities of similar nature, The activities may also include design, procurement, construction, to commissioning and handover of the project to the End-User or Owner or any other party pertinent.

o. **Fee(s)**

Fee(s), for the purpose of this Guidelines, will mean the technical assistance fee(s), technical knowledge/technical knowhow fee(s), franchisee fee(s), royalty fee(s), and outlet opening fee(s), and to be paid/remitted by the applicant company to the collaborator company outside Bangladesh.

p. **Foreign Principal**

Same as Beneficiary Organization or Collaborator.

q. **Franchise**

A franchise is a type of license that a party (franchisee) acquires to allow them to have access to a business's (franchisor) proprietary knowledge, processes, anything intangible asset in nature, and trademarks in order to allow the party to sell a product or provide a service under the business's name.

r. **Franchisee**

An individual or company that holds a franchise for the sale of goods or the operation of a service from the franchiser.

s. **Franchiser**

A company that provides franchise rights to those who want to own a franchise.

t. **Franchise Fee(s)**

Franchise fee(s) is any fee(s) or charge that a franchisee or sub-franchisor is required to pay or agrees to pay for the right to enter into a business or to continue a business under a franchising agreement. It is an initial fee(s) required to pay by a party (franchisee) to a business's (the franchiser) for having access to its brand name/proprietary knowledge, processes and trademarks or anything intangible asset in nature in order to sell a product or provide a service under that business's name.

u. **Guidelines**

Guidelines means the "Guidelines for Outward Remittance Repatriation for Payment of Royalty, Technical knowledge/Technical know-how Fee(s), Technical Assistance Fee(s), and Franchise Fee(s), 2020" as approved and circulated by BIDA.

v. Industrial Enterprise

Any private industrial enterprise in Bangladesh as registered by BIDA and defined in Section 15(3) of the Bangladesh Investment Development Authority Act, 2016.

w. Intellectual Property

Intellectual Property (IP) refers to creations of the mind, such as inventions; literary and artistic works, designs, symbols, names and images used in commerce. It might include, but not limited to, copyright, patents, trademarks, industrial designs, geographical indications, and trade secrets which should have economic value.

x. Operation and Maintenance (O&M) Fee(s)

The O&M Fee(s) is a type of payment paid to a collaborator for the operation and maintenance (O&M) services, which is technical in nature and associated with operating and maintaining of a particular process of the industrial endeavor.

y. Outlet Opening Fee(s)

Fee(s) charged by a franchisor to open a distinguishable unit branch/outlet of the franchise by the franchisee.

z. Outward Remittance

Outward remittance means a remittance by a remitting bank, entrusted by the remitter being an enterprise, remit foreign currency funds to a nominated bank selected by the collaborator in performing any assigned activities to beneficiaries of the certain instrument and instruct them to pay the certain amount to the nominated payee.

aa. Parent Company

A parent company is a company that owns enough voting stock in another firm to control management and operation by influencing or electing its board of directors. Companies that operate under this management are deemed subsidiaries or associates of the parent company.

bb. Patent

A patent is an exclusive right granted for an invention, which is a product or a process that provides, a new way of doing something, or offeres a new technical solution to a problem. The technical information about the invention must be disclosed to the public in a patent application and must be registered with the related agency of the country concerned.

cc. Private Firms

Private firm means any industrial enterprises as defined in Section 15(3) of the Bangladesh Investment Development Authority Act, 2016.

dd. Professional Valuation Agency

A person or company, who provides valuations of the property and service (Including franchisee and related fee(s)) to support taxation and other purposes.

ee. Royalty fee(s)

Royalty is a fee(s) paid by a local industrial company to the foreign collaborator in consideration of license to use the foreign manufacturers' patent/brand name/franchise for marketing and or producing the product(s). Royalties are payments of various types to owners of property for use of that property which usually deals with payments for the right to use intellectual property, like copyrights, patents, and trademarks the fee(s) payable to the royalty will comply with the related provisions of the Patents and Designs Act, 1911 and Trade Mark Act, 2009 of Bangladesh.

ff. Sales Revenue

Sales revenue is the income received by a company from its sales of goods or the provision of services.

gg. Technical Assistance

A specific non-generic assistance which requires definite skill to complete a defined task contracted to the industries and/or companies by local or international specialists. It can take the form of sharing information and expertise, instruction, skill training, transmission of working knowledge, facilitating for creating specific task and consulting services. Technical assistance fee(s) may include fee(s) for Engineering, Procurement and Construction (EPC), Operation and Maintenance (O&M) fee(s) and any fee(s) associated in the nature of technical assistance for requiring project for which the payment of these fee(s) are necessary to successful completion of these projects.

hh. Technical knowlege/Technical know-how

A service rendered by a foreign collaborator/parent/group to a business entity duly registered with BIDA in consideration of specialized services including engineering and technical service, assistance on manufacturing

process, testing and quality control, assistance or any other technical support required for running the projects by way of making available patented processes and/or know-how and right to avail of the technical/confidential, non-public, proprietary and an exclusive information resulting from continuous technical research and development etc. the technical knowledge/technical knowhow will not be applicable for purchase/ hiring of technical assistance.

ii. **Third Party Assessment**

Third-party assessments, for the purpose of this Guidelines, are independent evaluations performed by a specialist firm, chartered accounting firm or agency on the amount of franchisee fee(s) settled between the franchise and the franchisor in connection to operating a franchise business in Bangladesh.

jj. **Third Party Assessor**

A specialist firm, chartered accounting firm or agency that carries out the third party assessment.

kk. **Trade Mark**

“Trademark” means the trade mark defined in the Section 2(8) of the Trade Mark Act, 2009 of Bangladesh, which is as under :

‘(a) in relation to Chapter X of Trade Mark Act 2009, other than section 77-

(i) a registered trademark or a mark used in relation to goods for the purpose of indicating a connection in the course of trade between the goods and the person having the right as proprietor to use the mark;

(ii) a mark used in relation to a service so that it may be indicated that the person has the right as proprietor to use the mark in the course of trade;

(b) in relation to the other provisions of this Act, a mark used or proposed to be used in relation to any service or goods indicating a connection in the course of trade between the goods and the person having the right, either as proprietor or as registered user, to use the mark;

(c) certification trademark

II. Transfer Pricing

Transfer pricing is the setting of the price for goods and services sold between controlled (or related) legal entities within an enterprise. Transfer pricing is a pricing mechanism among willing partners in an arm's lengths transaction which is defined as per the applicable section of CHAPTER XIA of the Income Tax Ordinance, 1984 of Bangladesh as well as globally accepted best practices. Transfer pricing involves the assignment of costs to transactions for goods and services between related parties. For example, if a subsidiary company sells goods to a parent company, the cost of those goods paid by the parent to the subsidiary is the transfer price.

2.0 Types of Permissible Fee(s)

Permission will be given to any private industrial enterprise as registered by BIDA and defined in Section 15(3) of the Bangladesh Investment Development Authority Act, 2016 for outward remittance on account of payment of royalty, technical knowledge/technical know-how fee(s), technical assistance fee(s), and franchisee fee(s), as mentioned in this Guidelines. The permission will also be granted for outward remittance for paying fee(s) in the nature of operation and maintenance (O&M) services, payable to foreign Engineering, Procurement and Construction (EPC) firms or contractors or companies associated with any public or private project implemented in Bangladesh.

3.0 General Conditions

The permission for outward remittance repatriation will be allowed under the following conditions:

- a) Private industrial enterprises as registered by BIDA and defined in Section 15(3) of the Bangladesh Investment Development Authority Act, 2016 will be considered for such permission.
- b) All proposals for outward remittance will be considered based on the value addition of the transaction. Transaction of no or minimum value addition, transaction made without following arm's length principle and/or transaction of rudimentary nature will be discouraged.
- c) Fee(s) will be allowed to remit by the local companies to their foreign collaborator usually on a yearly basis. This condition of remittance may be relaxed in case of a genuine contractual obligation for any transaction.

4.0 Procedures of Remitting Fee(s)

4.1 *Payment of royalty, technical knowledge/technical knowhow, technical assistance and franchise Fee(s)*

4.1.1 As a general principle, an industrial enterprise (registered with BIDA) will be allowed to remit permissible amount of fee(s) as specified in **Schedule 1** for the purpose of paying royalty, technical knowledge/technical know-how, technical assistance and franchise to the foreign collaborators directly through Authorized Dealer (AD) Banks in Bangladesh without prior approval from BIDA while complying with the provisions (scope of services, payment amount, payment schedule and other applicable conditionalities) as stated in the concerned contract between the parties which has been pre-endorsed by BIDA beforehand, subject to the following conditions:

- (a) This provision will be applicable only for post-service cases and against a service completion certificate from the beneficiaries.
- (b) The industrial enterprise(s) have to apply to BIDA in prescribed format for endorsing the contracts immediately after signing and before any remittance takes place.
- (c) Designated official of BIDA, after ensuring approval from appropriate authorities, will endorse the contract with his/her signature and seal in each and every page(s) of the contract. The endorsement letter such issued shall clearly state the titles/names, respective limits, timeframes, conditionality and schedules of payments of fees. BIDA may require the applicant to revise the contract to comply with the provisions of this Guidelines before the endorsement is provided.
- (d) One contract will require endorsement from BIDA only for once and can afterwards be used for multiple remittance transactions as long as these remains within the purview/limit of the endorsed payment schedule of the endorsed contract. However, re-endorsedments(s) of the contracts will be required if any change/update/improvement of the contract takes place later.
- (e) During repatriation of the remittance(s), the concerned industrial enterprise will ensure that the purpose of the remittances complies with the provisions (scope of services, payment amount, payment schedule and other applicable conditionality) of the contract/ agreement endorsed by BIDA.

- (f) BIDA will suggest an application format and a list of required documentation to be complied with by the industrial enterprises as well as to be followed/checked by the AD Banks in processing the remittance repatriation applications. Copy of the contract endorsed by BIDA should be considered as a mandatory document when an application for remittance is made by the industrial enterprise(s) to the AD Banks.
- (g) AD Banks will further ensure that the provisions of the relevant guidelines of BIDA and the Bank is fully complied with.
- (h) After the remittance repatriation is completed, AD Banks will forward all relevant documents to BIDA for information and post facto verification. BIDA may carry out post facto verification of all or some of the transactions so happened and may take appropriate pecuniary measures against the concerned industrial enterprise if any deviation and discrepancies are found. BIDA will keep the Bangladesh Bank informed about any such incident(s), if so happen.
- (i) Concerned AD Banks will appropriately follow all the relevant banking and reporting rules and regulations while carrying out the remittance repatriation as are described in this Guidelines. Bangladesh Bank will have the authority take appropriate actions against any such banks if any deviation and discrepancies of existing rules and regulations are observed.

4.1.2 In cases the amount of remittance for the purpose of paying royalty, technical knowledge/ technical know-how, technical assistance and franchise to the foreign collaborators exceeds the limit mentioned in Schedule 1, prior approval from BIDA will be required before remitting the same through the AD Banks.

4.2 Payment of Fee(s) in Advance

Advance payment of remittances will be allowed, only with prior approval from BIDA on each and every case of repatriation, on following conditions:

- (i) Technical knowledge/technical knowhow or technical assistance fee(s) up to US\$ 10,000 per agreement will be allowed to remit once a year. This advance payment must be adjusted with the accumulated C&F value of import of machineries or with the sales revenue of the company after going into operation.

- (ii) Advance payment beyond the limit stated in para 4.2 (i) will be allowed only on the terms and conditions mentioned in the contract (verified/endorsed by BIDA) signed between the local company and the foreign company.
- (iii) Any kind of advance payment as stipulated in this Guidelines must be adjusted with the 6% of the C&F value of all imported machineries or with the 6% of the revenue/sales within two (02) years of starting commercial operation. BIDA may consider any request to extend the duration of adjustment in cases of unforeseeable situation.
- (iv) Applications for allowing advance payment as stipulated in this Guidelines must be accompanied with bank guarantee, affidavit or any other appropriate guarantee.

4.3 Payment of Fee(s) to Contractor(s) in a Project

- (a) Contractor(s) from foreign countries and operating in Bangladesh with any public or private project will be allowed to remit fee(s), only with prior approval from BIDA on each and every case of repatriation. The payment of such fee(s) may be allowed on quarterly, semi-annually and annual basis as stipulated in the agreement.
- (b) If any local company made an agreement with an international service provider for delivering any service produced locally or imported from overseas, the local company can apply for permission to remit fee(s) earned from that service. BIDA will examine issues related to such transaction while granting any permission for such outward remittance.

5.0 Fee(s) beyond permissible amounts

Proposal for outward remittance exceeding 6% (for the cases of royalty/technical knowledge/technical know-how/technical assistance) will need prior approval from BIDA, even if the concerned contract/agreement contains endorsement from BIDA. BIDA may consider such proposals that generate significant continuing impact on the economy and have substantial linkage/value creation, generate significant number of employment, transfer advanced technology, enhance skill of local force, and/or diversify agricultural, manufacturing and service sector of the country.

6.0 Transfer Pricing Issues

If the proposed remittance is being paid/remitted to a sister concern or parent or subsidiary of the applicant company, a third-party assessment should be submitted explaining whether the Arm's Length principal has been followed in the said transaction in accordance with the rules stipulated in the Income Tax Ordinance 1984 (and as amended).

7.0 Matters to be dealt by Bangladesh Bank

Bangladesh Bank may look into the issues of remittances that are beyond the scope of BIDA and of this Guidelines. Bangladesh Bank may issue operational instructions time to time to the Authorized Dealer Banks with regards to remittances of foreign exchanges in the mentioned areas based on requests by BIDA.

8.0 Application Procedure

Both manual and Online Applications for contract/agreement endorsements and remittance repatriation (as applicable according to the provisions of Paragraph 4.0) will be accepted in BIDA. Applications can be made together with relevant documents according to prescribed application format. Online applications can be submitted through BIDA website at www.bida.gov.bd or www.bidaquickserv.org.

BIDA, wherever applicable, will examine necessary documents related with the projects, all types of contractual documents, financial agreements, as well as other essential/associated documents as deemed necessary to assess the proposed transaction. Applications will be considered based on the merits of the proposals such as : technology transfer, linkage/value creation, employment generation, local skill enhancement, diversification of new manufacturing and service sectors.

9.0 Authenticity of the Submitted Information

The applicant must have to submit an undertaking to BIDA mentioning that all records, documents, information and statements submitted and/or furnished are authentic and true. BIDA reserves all rights to take appropriate legal action and impose pecuniary penalty if any false or fabricated document and information have been submitted or furnished. BIDA also reserves the right to take legal action and/or file criminal case(s) against the applicant if it is found or detected in future that false information and/or false or fabricated document(s) were given or submitted with any proposal for remittance.

10.0 Amendments of the Guidelines

BIDA will have the authority to amend and replace any part and/or the whole of the Guidelines as and when required.

11.0 Repealing of all previous Guidelines

All previous guidelines, circulars, orders, rules and/or acts issued by erstwhile Board of Investment and/or BIDA on issues related to outward remittances are repealed henceforth. Nevertheless, decisions made on repealed guidelines, circulars, orders, rules and/or acts will be deemed to be valid under this Guidelines, while only the pending decisions will be finalized based on previous guidelines, circulars, orders, rules and/or acts.

MOHSINA YASMIN

Executive Member 3

(Additional Secretary).

Schedule 1

Permissible amount of fee(s) to be remitted without BIDA's approval (pursuant to the provisions of Paragraph 4.1)

1.0 Royalty, technical knowledge/technical know-how, technical assistance fee(s)

- (a) For projects under implementation, not exceeding 6% of the total accumulated C&F value of imported machineries of the concurrent year(s) before going into commercial operation;
- (b) For projects under commercial operation, not exceeding 6% of the previous years' sales (excluding Value Added Tax) as declared in the income tax returns.

2.0 Franchise fee(s)

Fee(s) more than US\$ 0.1 million USD will be allowed to be remitted in installments. The 50% of the approved claim will be allowed to remit in the 1st year, 30% in the 2nd year, and the rest of the 20% in the 3rd year.

3.0 Advance fee(s)

All advance payments, if allowed before generating revenue must be adjusted within one year of going into commercial operation by the entity.

4.0 Fee(s) payable to Contractor(s) in a project

In case of recurring payments required by any obligatory agreement, maximum 6% of sales revenue (excluding Value Added Tax) as declared in the previous year's income tax return or VAT return (VAT returns will be considered only for the first year in case of new project) may be allowed. The payment of such fee(s) may be allowed on quarterly, semi-annually and annual basis as stipulated in the agreement.