FINANCIER WORLDWIDE corporatefinanceintelligence

Foreign investment in Pakistan – legal and regulatory requirements and opportunities

BY SAMIYA FIKREE, FERZEEN BHADHA AND KHUSHNUM MUNCHERJI

Foreign investment in Pakistan is generally required to be made through equity participation in locally incorporated companies. Branches of foreign companies are not allowed to undertake commercial activity (except in the case of banks, oil exploration companies, hotel management, airlines and shipping lines). While liaison offices are permitted, permission for such offices are granted for limited periods and on the condition that it will not engage in any commercial activity and that the entire cost of setting up, maintaining and operating the liaison office is met through the inward remittance of foreign currency.

The Government of Pakistan has established the Board of Investment to promote, encourage and facilitate both local and foreign investment in Pakistan.

In the case of industrial projects, 100 percent foreign investment is permitted. There is no minimum equity investment requirement. Industrial projects include manufacturing concerns and certain non-manufacturing activities such as information technology, housing, telecommunications and tourism.

Up to 100 percent foreign investment is now also permitted in non-manufacturing companies, provided the amount invested in the share capital of such company is not less than US$150,000, subject to an entitlement certificate being granted by the State Bank of Pakistan. Non-manufacturing companies include trading companies, companies providing services and companies involved in infrastructure, social and agricultural sectors.

The investment climate is investor friendly and foreign investment is repatriable and easily made by inward remittance of foreign currency through normal banking channels, including utilisation of credit balances in foreign currency accounts maintained with banking institutions operating locally.

The investment made is treated as a Pakistan Rupee investment. The company in which investment is made may be a private company, or a public company which may be either unlisted or listed on one or more of the recognised stock exchanges in Pakistan. However, the amount invested must not be less than the subscription amount or the break up (book) value of the shares. Investment complying with the above requirements is considered repatriable investment and, as such, dividends and profits and disinvestment proceeds up to market value in the case of listed securities and break up (book) value in the case of unlisted securities may be remitted out of Pakistan at the rate of exchange prevailing on the date of remittance.

A company incorporated in Pakistan may, with the prior permission of the State Bank of Pakistan, open a special foreign currency account in which it may receive foreign equity contributions, which may then be utilised by such company to purchase items from abroad. For the purposes of issuance of shares to the non-resident shareholder, the exchange rate prevailing on the date on which the amount is received in the foreign currency account will be applied to determine the Pakistan Rupee equivalent received by the company and against which it will issue shares to the non-resident shareholder.

At present, corporate tax is payable by a company in Pakistan at the rate of 35 percent of its net income. Dividend income is subject to withholding tax, which is required to be withheld at source at the rate of 10 percent. Shares in a Pakistan company are capital assets, and capital gains arising upon sale of a capital asset is liable to capital gains tax. However, capital gains arising on the sale of listed securities is exempt from tax for sales effected on or before 30 June 2010. If the shares are held for more than 12 months then only 75 percent of the capital gain is taxed.

As regards tax incentives, Pakistan has established certain export processing or special economic zones which offer certain tax incentives. These zones are for all purposes treated as being 'off shore', and products manufactured in such zones are intended for export from Pakistan. Although there is a wide choice of industries that can be set up in the export processing zone, preference is given to hi-tech projects, capital intensive projects, labour intensive projects or projects based on maximum local raw material.

The State Bank of Pakistan has granted a general exemption for the remittance of royalty and technical fees by manufacturing entities for use of brands and for the provision of engineering and technical services under agreements registered with the State Bank of Pakistan. Except in the case of franchises (which includes franchises granted by international food chains), there is no prescribed limit as to the amount of royalty or technical assistance fee which may be paid. However, generally royalty and technical fees range from 1.5 to 4 percent of net sales of locally manufactured goods. In the case of franchises, royalty cannot exceed 5 percent of net sales of own products and royalty may be paid only for a period of five years. Royalty and technical assistance fees may be paid only in the case of locally manufactured products. No royalty or technical assistance fee may be paid in the case of products imported in finished form or imported in bulk and re-packed in Pakistan. Pakistan is also a signatory to a number of double taxation treaties and payments of royalty and technical assistance fee are subject to 15 percent withholding tax which, although it has to be deducted at source, may be adjustable under the relevant treaty for avoidance of double taxation.

A company incorporated in Pakistan, even if it is 100 percent foreign owned, may now own immovable property in Pakistan and there are no limitations or restrictions as to the geographic regions within Pakistan in which a foreign company may operate or invest.

Work permits are required for the engagement of foreign nationals. Such permissions are granted by the Board of Investment and the Ministry of Interior. Foreign nationals are permitted to remit their salaries out of Pakistan, on a monthly basis, provided that the amount remitted is the difference between the net income and estimated living expenses of the foreign national in Pakistan.

In the past several months Pakistan has seen a gradual decline in foreign investment and project related work. However, recent developments indicate a change in investment activity. One finds that international players are once more viewing Pakistan as a market for opportunity and growth and are investing in key sectors such as energy, power and infrastructure. ■

Samiya Fikree, Ferzeen Bhadha and Khushnum Muncherji are associates at Vellani & Vellani.
Ms Fikree can be contacted on +92 (21) 3580 – 1000 or by email: samiya.fikree@vellani.com.
Ms Bhadha can be contacted on +92 (21) 3580 – 1000 or by email: ferzeen.bhadha@vellani.com.
Mrs. Muncherji can be contacted on +92 (21) 3580 – 1000 or by email: khushnum.muncherji@vellani.com

Samiya Fikree
Associates
T: +92 (21) 3580 – 1000
E: samiya.fikree@vellani.com
www.vellani.com

Samiya joined the firm in June 2001 and has since then been primarily involved in matters related to intellectual property, corporate and commercial law including privatisations, mergers and acquisitions, de-listings of companies from the Stock Exchanges, developing industry standards for the petroleum sector, and advising a number of clients in various fields, including beverages and foods, pharmaceuticals, petroleum, chemicals, edible oils, soaps and detergents, tea and the health sector. She has also participated in litigation proceedings on various banking cases, commercial and civil cases and family law matters while assisting senior counsel in the various courts of Pakistan up to the Supreme Court. She is enrolled as an advocate with the Sindh Bar Councila member of the Karachi Bar Association and Pakistan Industrial & Intellectual Property Rights Association.

Ferzeen Bhadha
Associates
T: +92 (21) 3580 – 1000
E: ferzeen.bhadha@vellani.com
www.vellani.com

Ferzeen joined the firm in 1998 and has since been involved in corporate and commercial matters, including mergers and acquisitions, finance and taxation, foreign direct investment, joint ventures, anti-trust, project financing, developing standards for the petroleum industry, the setting up and operation of manufacturing facilities, banking and financing transactions, privatisation, acquisitions and litigation in taxation and other commercial matters. Such work has been conducted in the field of beverages, pharmaceuticals, petroleum, natural gas, minerals, cement, steel, tea, banking and finance. She has also participated in litigation proceedings, while assisting senior counsel in the courts of Pakistan upto the High Court. She is enrolled as an advocate with the Sindh Bar Council and is a member of the Pakistan Industrial & Intellectual Property Rights Association.

Khushnum Muncherji
Associates
T: +92 (21) 3580 – 1000
E: khushnum.muncherji@vellani.com
www.vellani.com

Khushnum joined the firm in September 1998. Since joining she has been principally involved in commercial matters including coprorate work, finance and taxation matters including assisting senior counsel in litigation in specialised tribunals and the courts in Pakistan upto the High Court. Her area of expertise include mergers, acquisitions, corporate finance, project finance, anti trust matters and monopolies, franchising and intellectual property. She has a wide experience in matters relating to intellectual property which includes trade marks and copyrights. She has given opinions on trade mark availability and infringements, prepared trade mark applications, and engaged in various opposition proceedings and appeals. She is enrolled as an advocate with the Sindh Bar Council and the Sindh High Court Bar Association and is a member of the Pakistan Industrial and Intellectual Property Association, International Trademarks Association (INTA) and the Asian Patent Attorneys Association (APAA).