



# BIDA guidance on remittance of Royalty and Technical Fees



Outward remittances from Bangladesh are highly regulated by the Foreign Exchange Regulations Act 1947 and circulars issued thereunder by Bangladesh Bank, the central bank of Bangladesh. A common remittance requirement for many businesses in Bangladesh is payment for royalty and technical fees. Bangladesh Bank requires such remittances to be approved by Bangladesh Investment Development Authority (BIDA), the primary regulator for industrial enterprises operating in Bangladesh.

Until quite recently, there was a lack of guidance for businesses seeking approval for royalty and technical fee remittance, which created certain confusions. However, this issue has been resolved by a circular issued by BIDA on 3 March 2021. The circular details and simplifies the scope of royalty and technical fees and conditions for remittance approvals.

As per the circular, private industrial enterprises registered with BIDA under Section 15(3) of the BIDA Act 2016 can obtain permission for outward remittance for payments of royalty, technical knowledge/ technical know-how fee(s), technical assistance fee(s) and franchise fees subject to compliance of certain conditions.

The circular provides much needed definitions for:

- **Royalty fee**

Royalty is a fee paid by a local industrial company to the foreign collaborator in consideration of license to use the foreign manufacturer's 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 for royalty will need to comply with the related provisions of the Patents and Designs Act, 1911 and Trademark Act, 2009 of Bangladesh.

- **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 project for which the payment of these fee(s) are necessary to successfully completion of these projects.

- **Technical knowledge/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.

- **Contractor**

A person or firm that undertakes a contract to provide materials or labour 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.

- **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 have economic value.

## 1. Permissible amount of royalty and technical fees

Businesses can remit royalty, technical fees, franchise fees etc without requiring BIDA's approval for remittance on the basis of service contract endorsed or approved by BIDA subject to the permissible limits as follows:

- For projects under implementation, royalty and technical fees are allowed up to 6% of the total accumulated C&F value of imported machineries of the concurrent year(s) before going into commercial operation.
- For projects under commercial operation, royalty and technical fees are allowed up to 6% of the previous years' sales as declared in the income tax returns.
- Franchise fee more than USD 0.1 million will be allowed to be remitted in instalments; 50% of the approved claim will be allowed to be remitted in the 1st year, 30% in the 2nd year, and the balance 20% in the 3rd year.
- For recurring fees payable to a contractor, maximum 6% of sales revenue as declared in the previous year's income tax return or VAT return may be allowed.

For remittances exceeding the permissible limits, BIDA approval for the remittance will be necessary along with endorsement or approval of service contract by BIDA.

## 2. Conditions for remittance of royalty and technical fees

Businesses are required to remit royalty and technical fees through their authorised dealer banks (AD banks) subject to fulfilling the following conditions:

- Remittance permission will be given only to private industrial enterprises registered with BIDA.
- Approval of royalty and technical fees will be based on the value addition of the transaction. Royalty or technical service of no value or rudimentary nature may not be allowed. This implies that such fees should have a positive impact on the sales of the service recipient.
- The service contract should be approved by BIDA. If the contract is amended, re-approval will be required.
- Royalty, technical fees, franchise fees etc will be allowed after the recipient has provided a certificate of service completion.
- For advance payment before completion of service, prior approval of BIDA is required:

- Technical fees up to USD 10,000 per agreement will be allowed to be remitted once a year.
  - The advance payments would be adjusted with the permissible limits.
  - Advance payment must be securitised with bank guarantee, affidavit or any other appropriate guarantee.
  - For any deviations (e.g. high advance payment or inability to adjust advance payment) separate BIDA approval will be necessary.
- Royalty and technical fees should comply with arm's length pricing principal and a third-party assessment of the transaction complying with arm's length pricing principle as specified by Income Tax Ordinance 1984 will be required, if the remittance is made to a foreign associated enterprise/related party.
  - Remittances are required to be approved on a yearly basis, but it may be relaxed based on specific cases.
  - BIDA reserves the right for post facto verification of the remittance and may charge monetary penalties to the industrial enterprise if there is any deviation/discrepancy in the transaction. BB will also be informed of any such incident.

### 3. Regarding payment of fees to Contractors in a project


Payments of permissible fees to foreign parties which acts as a contractor for a project in Bangladesh can only be done with prior approval from BIDA for each remittance.

In case of recurring payments to contractors, maximum 6% of sales revenue (excluding Value Added Tax) as declared in the previous year's income tax return or VAT return may be allowed for outward remittance. The frequency of such payments can be dependent on the associated agreement.

Bangladeshi entities can apply to BIDA for permission to receive services, either locally produced or imported, by international service providers. BIDA will examine the issues related to such transaction while granting any permission.

### 4. Procedure for remittance of royalty and technical fees

| Steps | Details  | Remarks  |
|-------|--|--|
| 1     | Apply to BIDA for approval of service contract through prescribed forms before remittance. | <ul style="list-style-type: none"> <li>— The approval is a one-time activity and the approved service contract can be used for each payment.</li> <li>— If the contract is amended, re-endorsement or re-approval will be required.</li> </ul>                                     |
| 2     | Special approval for advance payment or remittance of fees exceeding permissible limit     | <ul style="list-style-type: none"> <li>— BIDA may provide such approval based on the merit of the case.</li> </ul>   |
| 3     | Apply in prescribed forms along with BIDA's suggested documents to the AD bank.            | <ul style="list-style-type: none"> <li>— A copy of the endorsed service contract must be submitted during application.</li> <li>— Business should ensure that the purpose of the remittances complies with the provisions of the contract endorsed or approved by BIDA.</li> </ul> |
| 4     | Remittances are conducted by AD bank.  | <ul style="list-style-type: none"> <li>— Remittance can usually be done only on a yearly basis, however, based on specific case, exception can be made.</li> </ul>   |



© 2021 Rahman Rahman Huq and KPMG Advisory Services Limited, are entities registered and incorporated in Bangladesh and member firms of the KPMG global organisation of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no services to clients. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

The KPMG name and logo are trademarks used under licence by the independent member firms of the KPMG global organisation