

Foreign Companies' Guide



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN



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Disclaimer

The Guide has been published with the intention to create an awareness of the concept of the relevant matters. However, the Guide does not tell everything and the opinions or legal interpretations, contained in the booklet are circumstantial and may vary under different situations. If the reader is in doubt while dealing with any specific condition, it is recommended to refer to the Companies Ordinance, 1984 and allied laws and consult an adviser for seeking professional advice.



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Introduction

This guide outlines the statutory requirements under the Companies Ordinance, 1984 for a 'Foreign Company'. A company which is incorporated or formed outside Pakistan which establishes its place of business within Pakistan is called a 'Foreign Company'.

The guide is intended as an introductory guide only. You can obtain, on request, further information from the Company Registration Offices. However, it is advisable to consult a professional for detailed guidance.

The relevant provisions of law are contained in Part XIV of the Companies Ordinance, 1984 (the Ordinance) and Rules 22 & 23 of the Companies (General Provisions and Forms) Rules, 1985 (the Rules)

(This is a guide only and should be read with the relevant legislation).

CHAPTER 1

REGISTRATION OF A FOREIGN COMPANY

1.1 Who needs to deliver the requisite documents?

Every foreign company which establishes a place of business in Pakistan has to deliver the requisite documents to the registrar concerned within 30 days of establishment of a place of business in Pakistan.

1.2 What is a Place of Business?

A place of business includes branch, management, share transfer or registration office, factory, mine or fixed place of business but does not include an agency unless the agent exercises a general authority to negotiate and conclude contract or maintains stock of merchandise on behalf of the company.

Following are the exceptions:

1. Company shall not be deemed to have an established place of business in Pakistan merely because it carries on business dealings in Pakistan through a bona fide broker or general commission agent acting in the ordinary course of his business.
2. The fact that a company has a subsidiary which is incorporated, resident, or carrying on business in Pakistan, shall not of itself constitute the place of business of that subsidiary an established place of business of the company.

1.3 What are the steps for registration of a foreign company?

Registering a Foreign Company comprises the following two steps:

1. Seek Availability of Company Name
2. Documentation

Step 1. Seek Availability of Company Name:

The first step in the process of registration of a Foreign Company is to seek availability of name of the proposed company from the registrar. The name of the proposed company should not be:

- Inappropriate
- Deceptive.
- Designed to exploit or offend the religious susceptibilities of the people.
- Identical or having close resemblance with already existing company.
- Suggesting connection with any Government or its organization or any international organization.

Fees for seeking availability of company name through online processing is Rs. 200 and for offline processing is Rs. 500. For detailed procedure for seeking availability of company name, please see the 'Company Name Availability Guide' available at the link, <http://www.secp.gov.pk/GuideSeries.asp>

Step 2. Documentation

After seeking company name availability, next step is documentation. A foreign company is required to file the following documents, under the provisions of the Ordinance, within thirty days of establishing a place of business in Pakistan, to the registrar concerned:

I. Forms (38-43) as prescribed under the Rules

- Form 38: Certified copy of the charter, statute or Memorandum and Articles of the company.
- Form 39: Address of registered office or principal office of the company.
- Form 40: Particulars of directors, Chief Executive and

- Secretary, if any, of the company.
 - Form 41: Particulars of principal officer of the company in Pakistan.
 - Form 42: Particulars of person(s) resident in Pakistan authorized to accept service on behalf of the foreign company along with the certified copy of the appointment order, authority letter of board of directors' resolution and consent of the principle officer.
 - Form 43: Address of principal place(s) of business in Pakistan of the foreign company.
- I. Authority letter in the name of authorized representative of the foreign company.
 - II. Fee Challan

1.4 What type of certification is required for the documents constituting or defining the constitution of a foreign company?

A copy of the charter, statute, memorandum and articles of association, or other instrument, constituting or defining the constitution of a foreign company is required to be duly certified by:-

- (a) the public officer in the country where the company is incorporated in whose custody the original is committed; or
 - (b) a notary public of the country where the company is incorporated;
- or
- (c) an affidavit of a responsible officer of the company in the country where the company is incorporated.

In first two situations, at (a) and (b), certification is required to be authenticated by a Pakistan diplomatic consular or consulate officer,

while in third situation at (c) above, affidavit shall be signed before a Pakistan diplomatic consular or consulate officer. [Rule 22 of Companies (General Provisions and Forms) Rules, 1985]

1.5 What are the requirements, if charter, statute, memorandum and articles of association, or other instrument, constituting or defining the constitution of a foreign company, is in language other than English?

If the document constituting or defining the constitution of a foreign company, charter, statute or memorandum and articles of association is not in English or Urdu, duly certified translation in English or Urdu language is required to be provided. Translation of document constituting charter in English or Urdu, is required to be certified to be correct translation of the original. [Rule 23 of Companies (General Provisions and Forms) Rules, 1985]

Where translation is made outside Pakistan, it shall be authenticated by the signature and seal of:

- the public officer in the country where the company is incorporated; or
- a notary public of the country where the company is incorporated.

Signature and seal of the person so certifying shall be authenticated by a Pakistani diplomatic consular or consulate officer.

Where translation is made within Pakistan, it shall be authenticated by an affidavit of any person having in the opinion of the registrar, adequate knowledge of the language of the original and of English or Urdu, as the case may be.

1.6 What are the fees for registration of a foreign company?

Fees	Offline (Rs)	Online (Rs)
Registration of a Foreign Company	50,000	25,000
Filing of each Statutory Return / Form	1,500	600

v Fees for online submission have been set lower as compared to manual submission, to encourage online services.

1.7 Is a foreign company required to obtain any other permission from any other organization for opening and maintaining of its branch/ liaison office in Pakistan?

A foreign company is required to obtain a permission letter from the Board of Investment with a specific validity period for opening and maintaining of its branch/liason office in Pakistan. Copy of such permission letter is required to be furnished with the documents meant for registration.

Renewal/extension of the permission to open/maintain a branch/liason office is also required to be obtained from the Board of Investment on the expiry of the validity period of the permission originally granted. Whenever such renewal/extension is granted, a copy must be furnished to the registrar concerned.

CHAPTER 2

FILING OF RETURNS/ ACCOUNTS AND DISCLOSURE REQUIREMENTS OF A FOREIGN COMPANY

2.1 Which provisions of the Ordinance are applicable regarding the change of name of the foreign company?

The provisions of Section 37 to 41 of the Ordinance relating to the name and any change in such name are also applicable to a foreign company. A foreign company becomes subject to the same restrictions on its name as applicable to other companies which are incorporated in Pakistan.

2.2 Whether a foreign company is required to file any statutory return or deliver any document to the registrar concerned on change or alteration therein?

Any change or alteration in particulars of the documents and returns filed at the time of registration (as specified under section 451 and discussed at 1.3) is required to be notified within 30 days of such change or alteration (Section 452), in the following manner:

Form 44: Any change or alteration in the Memorandum of Association, Charter and Statute etc., previously filed on Form 38, is required to be filed on Form 44 within 30 days of such change or alteration.

Forms 39, 40, 41, 42 and 43: Any alteration in the information filed on any of these Forms, is required to file on the same Form.

2.3 Are there any statutory obligations for the foreign companies under the Companies Ordinance, 1984?

A foreign company is required to comply under Section 454 of the Ordinance with the following statutory obligations:-

- To maintain registers of Pakistani members and debenture-holders, directors and officers at its principal place of business and keeping it open to inspection.
- To state the country of origin in every prospectus inviting subscriptions for its shares or debentures in Pakistan.
- To exhibit the name of the company and the country of its incorporation on the outside of every place of business in Pakistan, in letters easily legible in English or Urdu characters and also if the place of business is beyond the local limits of the ordinary original civil jurisdiction of a High Court, in the characters of one of the vernacular language used in that place.
- To mention the company's name and country of incorporation in English or Urdu characters on all letter paper, bill heads, notices, advertisements, documents and other official publications of the company.
- To state the fact that the liability of the members of the company is limited in legible English or Urdu characters in every prospectus inviting subscription for its shares, all letter papers, bill heads, notices, advertisements, and other official publications of the company.

2.4 Is a foreign company obliged to register a mortgage/charge under the Companies Ordinance, 1984?

Under Section 463 of the Ordinance, the provisions of Section 121 to 136 as applicable to other companies, relating to the registration of mortgage and charges are also applicable to a foreign company. A foreign company at the time of creation of a mortgage or charge on their property in Pakistan, is required to file particulars of the mortgage or charge, together with a copy of the instrument creating or evidencing thereof, with the concerned registrar. The documents must be filed within 21 days after the creation of the mortgage/charge, as required under Section 121 of the Ordinance.

Section 121 of the Ordinance enlists the mortgages and charges to be registered. If a foreign company has already created a charge on a property in Pakistan, otherwise registerable under the Ordinance, it is required to file the documents within thirty days of the establishment of a place of business in Pakistan. All details about registration of mortgage and charge are available in the SECP's Guide of "Company Mortgages and Charges".

2.5 Does a foreign company maintain books of accounts?

The provisions of Section 230 of the Ordinance, relating to the maintenance of books of account by companies, apply to the foreign companies to the extent of requiring them to keep at their principal place of business in Pakistan the books of account with respect to money received and expended, sales and purchases made, and assets and liabilities of its business in Pakistan.

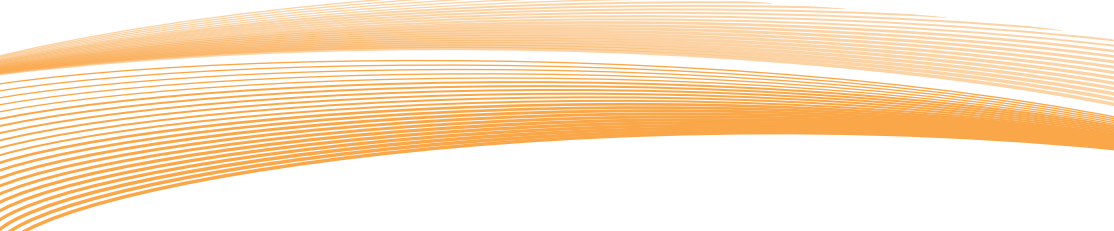
2.6 Which financial statements are required to be filed with the Registrar by a foreign company registered in Pakistan?

■ Under the provisions of Section 453 of the Ordinance, A foreign company is required to file with the registrar concerned the following accounts/ documents every year within 45 days of filing of the accounts to the public authority of the country of origin, or within six months of the date upto which the relevant accounts are made up, whichever is earlier:

■ Form 45 - containing places of business of the company in Pakistan, along- with Annual audited accounts in respect of its operations within Pakistan.

■ Global audited accounts.

■ List of Pakistani members and debenture holders.



Note: All foreign companies must deliver accounts - there is no exception. The accounts for its operations in Pakistan would be prepared and audited just like a public company.

Global accounts are the accounts which a foreign company files with the authorities in country of origin. If a foreign company is not required to file the Accounts in country of origin, it shall prepare Global Accounts and get the same audited for purpose of filing of such accounts under the Ordinance like a public company.

2.7 What are the consequences of failure to comply with the requirements of registration or reporting any change/ alteration in any return/ document?

According to the provision of Section 456 of the Ordinance, failure by a foreign company to comply with any of the requirements of registration or reporting any change/alteration in returns/ documents shall not affect the validity of any contract, dealing or transaction entered into by the company or the company's liability to be sued in respect thereof; but the company shall not be entitled to bring any suit, claim any set off, make any counter claim or institute any legal proceedings in respect of any such contract, dealing or transaction.

CHAPTER 3

CEASING TO HAVE PLACE OF BUSINESS IN PAKISTAN/ LIQUIDATION OF A FOREIGN COMPANY

3.1 How does a foreign company cease its activities in Pakistan?


Under the Section 458 of the Ordinance, if a foreign company ceases to have place of business in Pakistan, it is required to give notice to the registrar concerned at least 30 days before it intends to cease to have any place of business in Pakistan on prescribed Form 46 and to publish a notice of such intention at least in two daily newspapers circulating in the Province(s) in which such place(s) of business is situated.

All obligations of the company to deliver documents to the registrar concerned ceases from the date of such intention to cease to have any place of business in Pakistan, except that such foreign company does not have any other place of business in Pakistan.

3.2 What are the requirements if a foreign company goes into liquidation in the country of its incorporation?

If a foreign company having an established place of business in Pakistan goes into liquidation in the country of its incorporation, it is required to:

- (a) Give notice to the registrar concerned within 30 days;
- (b) Simultaneously publish a notice at least in two daily newspapers circulating in the Province or Provinces or the part of Pakistan not forming part of a Province, as the case may be, in which its place or places of business are situated
- (c) Furnish to the registrar concerned all returns relating to the liquidation and the liquidation account in respect of such Portion of the company's affairs as relates to its business in Pakistan, within thirty days of the conclusion of the

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- liquidation proceedings; and
- (e) Publish a statement on every invoice, order, letter paper, bill head, notice of other publications in Pakistan that the company is being wound up in the country of its incorporation.

CHAPTER 4

FURTHER INFORMATION

4.1 Where can you obtain the Forms and SECP Guide series?

The Commission has published a series of its Guides. These Guides briefly describe procedures of important matters relating to the Companies Ordinance, 1984, and the rules and regulations made thereunder. Statutory forms and guidance booklets are available, free of charge from our website, <http://www.secp.gov.pk/>.

4.2 How does a company send information to the registrar concerned?

You may file documents to the concerned Registrar, by hand, personally or by post or through courier to the Company Registration Offices concerning your company: Documents can also be submitted online through eServices.

List of Company Registration Offices:

Karachi

1. Company Registration Office,
4th Floor, State Life Building No.2, Karachi.
Tel: 021-99213272, Fax 021-99213279
Email: crokarachi@secp.gov.pk

Lahore

2. Company Registration Office,
3rd & 4th Floors, Associated House,
7-Egerton Road, Lahore.
Tel: 042- 99200274, Fax 042-99202044
Email: crolahore@secp.gov.pk

Islamabad

3. Company Registration Office,
State Life Building, 7-Blue Area, Islamabad
Tel: 051-9208740, Fax 051-9206893
Email: croislamabad@secp.gov.pk

Peshawar

4. Company Registration Office,
1st Floor, State Life Building,
The Mall, Peshawar Cantt.
Tel: 091-9213178, Fax 091-9213686
Email: cropeshawar@secp.gov.pk

Multan

5. Company Registration Office,
63-A, Nawa-i-Waqt Building, Abdali Road, Multan.
Phone: 061-9200530 Fax 061-9200530
Email: cromultan@secp.gov.pk

Faisalabad

6. Company Registration Office,
356-A, Al-Jamil Plaza,
1st Floor, Peoples Colony, Small D Ground,
Faisalabad.
Tel: 041-9220284 Fax: 041-9220152
Email: crofsb@secp.gov.pk

Quetta

7. Company Registration Office,
382/3, (IDBP House), Shahrah-e-Hali, Quetta Cantt.
Tel: 081-2844136 Fax: 081-2899134
Email: croqta@qta.paknet.com.pk

Sukkur

8. Company Registration Office,
House # 28, Hamdard Housing Society,
Airport Road, Sukkur.
Tel: 071-5633757 Fax: 071-5630517
Email: croskr@hotmail.com

PUBLIC CONSULTATION

If you have any suggestions for the development in the legal framework or otherwise, please let us know about your opinion/comments on the following address:

Registrar of Companies,
Securities and Exchange Commission of Pakistan,
NIC building, Jinnah Avenue, Blue Area, Islamabad, Pakistan.

Comments can also be sent via electronic mail at the following address: headquarters@secp.gov.pk

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