Foreign Exchange Investment: What Counts as Consideration for Cross-Border Shares?

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When shares cross borders between a resident and a non-resident in Bangladesh, what exactly can be handed over in return? For decades, Bangladesh has relied on a consistent set of answers, until a new development in March 2025 shifted the landscape. This article explores the two original acceptable forms of consideration, the one unique exchange that sat outside them, and exactly what the new rules do (and do not) settle.

Permission, Not Prohibition

Under section 13(1)(b) and (d) of the Foreign Exchange Regulation Act (FERA) 1947, the transfer of any security to a person resident outside Bangladesh, and the issue of any security registered or to be registered in Bangladesh to such a person, except with the general or special permission of Bangladesh Bank was prohibited. Therefore, it is arguable that cross-border movement of shares had never been an outright prohibition, but rather conditional on obtaining permission first.

The Classic Duo: Money or Machinery

How is this permission practically granted? Paragraph 9 of Chapter 9, Section II of the Guidelines for Foreign Exchange Transactions (GFET) 2018 outlines this. The Bangladesh Bank has historically given general permission for the issuance and transfer of shares to non-residents as long as the investment comes in one of two forms: freely convertible foreign exchange or capital machinery. Digging deeper into paragraph 2(A) of Chapter 9, Section I of GFET 2018, this general permission is granted subject to a few strict rules:

- Shares may be issued against freely convertible foreign exchange that is brought in from abroad via official banking channels.
- Alternatively, shares may be issued against the import of capital machinery, provided the payment for this machinery is made from abroad.
- If bringing in foreign exchange, the funds must be encashed into local Taka before the shares are actually issued.
- A notable exception to the encashment rule exists for Type A and Type B units in Export Processing Zones (EPZs) and Economic Zones (EZs), where equity brought in from abroad can be retained in foreign currency accounts.
- If capital machinery is used as consideration, it must physically clear Bangladesh Customs first before shares are issued.
- A third, parallel route exists for moving the money: shares can also be issued by debiting non-resident Taka accounts.
- These accounts must be maintained by authorized dealers in the names of their overseas branches or correspondents, specifically against inward remittances of convertible currencies.

Therefore, the general permission established two clear forms of consideration: money or capital equipment, with money permitted to travel through several distinct routes. This answer proved durable over the years. For example, Item 9 of Annexure-B to Foreign Exchange Investment Department (FEID) Circular No. 01 of 6 May 2018 explicitly required an encashment certificate for shares issued or transferred against freely convertible foreign exchange. Similarly, Item 10 of Annexure-B to FEID Circular No. 01 of 6 May 2018 demanded import documents when shares were issued in exchange for capital machinery paid for from abroad.

This regulatory consistency remained visible in subsequent updates. Items (vi) and (vii) of Annexure-A to FEID Circular No. 01 of 5 February 2020 maintained the same terms. Fast forward to FEID Circular No. 01 of 27 January 2025, which refers in paragraph 02 of that circular to issuance "against cash consideration" and mandates in paragraph 03 of the same circular that foreign exchange must enter through official banking channels prior to issuance. Items 8 and 9 of the corresponding annexure to FEID Circular No. 01 of 8 March 2026 (the March 2026 Master Circular) also preserve these original terms.

The initial observation emerging when reading section 13 of FERA 1947 alongside paragraph 2(A)(b) of Chapter 9, Section I of GFET 2018 is that using alternative forms of consideration was never strictly prohibited by law. Instead, other forms of payment simply fell outside the scope of the *general* permission. Consequently, they required *special* permission on a case-by-case basis. This distinction matters because it explains how regulatory stances could eventually shift simply through a renewed regulatory willingness to entertain applications, rather than requiring formal amendments to existing primary laws of the country.

The Classic Duo: Money or Machinery

When the tables turn and it is a Bangladeshi resident who wants to acquire foreign equity, the historical options were even narrower, the governing framework being the Capital Account Transaction (Overseas Equity Investment) Rules, 2022 (the 2022 Rules). Drafted under section 27 of FERA 1947 by the Financial Institutions Division on 9 January 2022 (SRO No. 08-Ain/2022), the 2022 Rules were officially circulated via FEID Circular Letter No. 01 of 26 January 2022. Rather than opening a broad gateway, these rules remained stringent around outbound investment, and constructed it entirely around liquid, monetary consideration:

- Under Rule 4(1) of the 2022 Rules, applications were strictly confined to exporting entities that held a "sufficient balance" in their Exporters' Retention Quota (ERQ) account. Rule 2 of the 2022 Rules goes on to explicitly define an ERQ account as a **foreign currency bank account**.
- The operational rules frame the entire investment around monetary transfers. Rule 5(2) of the 2022 Rules explicitly evaluates the application based on the "money to be remitted".
- Rule 8(a) of the 2022 Rules mandates that the investment money must be remitted directly into the bank account of the foreign subsidiary or, in the case of a purchase of shares in an existing company, directly in favour of the share transferor.

Because the framework strictly required funding the transaction from a foreign currency bank balance and wiring those funds directly to an overseas bank account, cash remittance was effectively the only legally recognized form of consideration. That gateway has not since been abandoned. Paragraph 77(2) of FE Circular No. 31 of 31 July 2025 lists the purposes for which ERQ balances may be used without prior approval — business visits, participation in fairs, maintenance of offices abroad, import of raw materials and machinery, repayment of authorised foreign loans — and then provides separately that foreign exchange from the ERQ account may be used for investment abroad with prior approval as per the 2022 Rules. As at that date, outbound equity investment was still being routed through the 2022 Rules

One Exchange That Already Existed, And Its Limits

Paragraph 8 of Chapter 9, Section II of GFET 2018 provides that Bangladesh Bank is prepared to consider applications for the exchange of foreign shares or securities held by residents of Bangladesh with Bangladeshi shares or securities held by residents abroad. Applications go through an authorised dealer or a stock and share broker, and are to be considered favourably provided the Bangladeshi securities to be imported are of approximately the same market value as the foreign securities to be exported.

It is to be noted that paragraph 8 sits under the heading *Import and export of securities*, and its terms are directional. The Bangladeshi resident begins holding foreign securities; the counterparty is a non-resident holding Bangladeshi securities; Bangladeshi paper comes in and foreign paper goes out. It is an exchange of holdings that already exist, tested against approximate market value parity, in which no company issues anything. It therefore does not assist a Bangladeshi company seeking to acquire a foreign business, and does not permit a resident to acquire foreign shares by giving up Bangladeshi ones. Readers should nonetheless be aware that paragraph 8 exists, since any assertion that share exchange was wholly unknown to the regime before 2025 would be wrong.

A Third Answer: Shares for Shares

FEID Circular No. 02 of 27 March 2025 (the March 2025 Circular) is titled *Establishment of legal entities abroad*. Paragraph 04 of the March 2025 Circular records a decision that Bangladesh Bank shall consider requests from resident companies to acquire shares abroad by exchanging their own shares or securities with the shares of companies abroad, rather than using cash consideration. It states that such investment is expected to be a strategic move bringing financial benefits to resident companies, and that Bangladesh Bank shall consider proposals in which the shares or securities swap ratio is determined in accordance with global best practices. Authorised dealers are to forward applications to FEID with detailed information as per Annexure-C to the March 2025 Circular.

Annexure-C to the March 2025 Circular is headed *Application for exchanging shares/securities between resident companies and overseas companies*, and calls for, on both sides, the type of securities to be exchanged, total paid-up capital, number of shares and face value, the fair value of the securities to be exchanged, the swap ratio, and earnings for the last three financial years per audited accounts.

For the first time, then, a third form of consideration enters the regulatory vocabulary: shares in another company.

It is noteworthy though that the March 2025 Circular does not set out how the ratio is to be built. The apparatus for valuing unlisted Bangladeshi shares was developed separately, from FE Circular No. 32 of 31 August 2014 through to the March 2026 Master Circular. Whether that apparatus governs a swap ratio under the March 2025 Circular is not stated, and the March 2026 Master Circular suggests it may not: its own repealing provision confines its subject matter to the transfer of shares and repatriation of sale proceeds in favour of non-residents in unlisted companies, and paragraphs 6(e) and 6(f) speak throughout of *the target company* in the singular, whereas a swap ratio is a relationship between two valuations.

There is, however, one indication to the contrary, paragraphs 6(c) and 6(h) of the March 2026 Master Circular require the valuation to accord with internationally best practices and global standards, which is similar vocabulary to the March 2025 Circular's requirement of conformity with global best practices. That echo maybe suggestive, but neither circular refers to the other. The March 2026 Master Circular leaves its phrase undefined yet makes the content arguably understandable: paragraph 1(o) requires ADs to ensure valuers possess the requisite expertise in the International Valuation Standards, paragraph 6(d) mandates International Accounting Standards and International Financial Reporting Standards as adopted in Bangladesh, and Annexure-A applies IVS 2025 in detail. The March 2025 Circular names no standard, prescribes no method, and sets no qualification for whoever determines the ratio.

The additional practical difficulty is that a swap ratio requires two valuations, one on each side of the border, and the regime supplies a detailed methodology and an approved list of valuers for only one of them. Annexure-C to the March 2025 Circular does call for the fair value of the securities on both sides, and Form-3 to the 2022 Rules had earlier required, for investment in an existing entity abroad, the fair value of the investment and the net asset value per share of the target. But neither prescribes how those figures are to be arrived at, nor who is competent to certify them. The valuer categories in paragraph 6(a) of the March 2026 Master Circular — BSEC-licensed merchant bankers and chartered accountants listed with Bangladesh Bank or BSEC — are domestic, and no instrument cited in this note indicates who may value an unlisted company incorporated abroad.

What a Share-for-Share Deal Necessarily Involves

It may be important to work through the mechanics of a transaction under paragraph 04 of the March 2025 Circular. The resident company hands over its own shares as payment. It cannot hand over shares it already holds, because a company cannot ordinarily hold shares in itself. The shares must therefore be created and allotted for the purpose. Whoever receives them, whether the overseas company itself or its shareholders (a matter the circular does not specify), is an person resident outside Bangladesh.

Section 13(1)(d) of FERA 1947 prohibits the issue of any security registered or to be registered in Bangladesh to a person resident outside Bangladesh, except with the general or special permission of Bangladesh Bank. The only general permission given is that in paragraph 2(A)(b) of Chapter 9, Section I of GFET 2018, which extends to shares issued against freely convertible foreign exchange or against imported capital machinery. Here the consideration is neither: it is shares in a foreign company. The issuance therefore falls outside the general permission and requires special permission.

It is tempting to treat this as two matters, an outbound acquisition, which paragraph 04 of the March 2025 Circular addresses, and an inbound issuance, which it does not. But it is observed and opined that these are not sequential steps capable of being performed separately. They are the same event seen from opposite ends: the shares issued to the non-resident are the consideration for the shares acquired abroad. Neither can occur without the other.

It follows then that an approval granted under paragraph 04 of the March 2025 Circular must carry with it permission for the issuance to non-residents. Any other reading would have Bangladesh Bank approving a transaction that cannot lawfully be performed.

The consequence is one of certainty rather than legality. A share-for-share acquisition is available only on application and approval, transaction by transaction. There is no standing entitlement, no published criteria beyond conformity with global best practices, and no amendment to GFET 2018 from which a practitioner could learn that the route exists at all.

Where This Leaves the Position

On the instruments cited, the answer to the opening question has moved from two forms of consideration to three, but only within a defined transaction. A non-resident cannot, as a free-standing matter, subscribe for shares in a Bangladeshi company by transferring shares in a foreign one: that remains outside the general permission. Share-for-share consideration is available where it forms the reciprocal half of an outbound acquisition approved under the March 2025 Circular.

At the moment of writing this, practitioners structuring such a transaction should expect the documentary and reporting requirements to be worked out with the authorised dealer and FEID rather than found in the March 2025 Circular, and would be well advised to establish the position before committing to terms.

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