

COMMENTS RECEIVED ON DRAFT UNCLAIMED SHARES, MODARABA CERTIFICATES, DIVIDEND AND OTHER INSTRUMENTS REGULATION, 2017

Draft Regulation	Comments/Suggestions	Comments by Dept./Company
<p>1. Short title, extent and commencement (1) These regulations may be called the Unclaimed shares, Modaraba certificates, dividend and other instruments Regulation, 2017</p>		
<p>1. A(2) They shall come into force on the date of their publication in the Official Gazette.</p>		
<p>2. Definitions (1) In these regulation, unless the context otherwise requires</p>	<p>The following definitions may be included: ‘Effective date’ means the date on which the Fund is notified in the Official Gazette; <u>(for calculation of interest)</u></p> <p>‘Principal amount’ means the amount, including interest and transferred of unclaimed amount to the Fund etc.;</p> <p>Please let us know the treatment of interest/profit earned by the company on unclaimed /unpaid dividend</p>	<p style="text-align: center;">SMD</p> <p style="text-align: center;">Hub Power</p>
<p>2. (1)(a) “Account” means the Companies Unclaimed Instruments and Dividend and Insurance Benefits and Investors Education Account as notified by the Minister in-charge of Federal Government in terms of sub-section (3) of section 244 of the Act</p>		
<p>2. (1)(b) “Act” means the Companies Act, 2017 (VI of 2017)</p>	<p>It is the Companies Act, 2017 (Act No. XIX of 2017) and not VI of 2017. This error may be corrected wherever appearing.</p> <p>This should be applicable initially to listed companies.</p>	SA Associates

2. (1)(c) "Bank" means the State Bank of Pakistan or National Bank of the Pakistan as notified by the Minister-in-Charge of the Federal Government under sub-section (3) of section 244 of the Act		
2. (1)(d) "Commission" shall have the same meaning as assign to it in clause (g) of sub-section (1) of section 2 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997)		
2. (1)(e) "Form" means forms appended to these regulations; and		
2. (1)(f) "Other instruments" includes instruments as referred to in regulation 3		
2. (2) Words and expressions used in these regulations but not defined herein shall have the same meaning as assigned to them in the Act.	<p>Unclaimed shares may not be included in the regulations, as it will have legal complications. The Bonus Shares are credited in the holding and if they are deposited with the Commission and later sold, it will change the proportion of holding in the company and may end up in litigation.</p> <p>Unclaimed dividend to include dividend in specie may be added.</p>	SA Associates
<p>3. Other instruments or amounts</p> <p>(1) The following instruments or amounts, which remain unclaimed or unpaid for a period of three years from the date it is due and payable, shall be considered as unclaimed instruments under clause (iii) of sub-section (1) of section 244 of the Act-</p> <p>(a) Term Finance Certificate (TFC)</p> <p>(b) Sukuks</p>	<p>Definition of securities may be added and thereafter instead of other instruments securities may be used.</p> <p>Instead of "other instrument" the term "redeemable capital" is define in the ACT may be used.</p>	SA Associates
3. (2) Subject to sub-regulation (1) the profit or any amount due on the abovementioned instruments, if remained unclaimed or unpaid for the period of three years from the date of maturity of such instrument shall also be included		
<p>4. Final Notice</p> <p>After the expiry of notice period as provided under sub-clause (a) of sub-section (1) of section 244 of the Act, the company shall publish final notice to the shareholders or certificate holders or the owners, as the case may be, to file claim, in two daily newspapers of which one will be in Urdu and one in English have wide circulation, on the Form A.</p>		
5. Deposit of unclaimed or unpaid amount to the Account		

<p>(1) Where no claim is made before the company by the shareholder, certificate holder or the owner, as the case may be, the company after ninety days from the date of publication of notice under regulation 4 shall deposit any unclaimed or unpaid amount to the credit of the Federal Government in the Account and within seven days of such deposit, provide to the Commission, copies of the relevant records along with the report on Form B in respect of amount of unclaimed dividend credited to Account.</p>		
<p>5. (2) The amount shall be tendered in any branch of the Bank along with Challan (four copies). The Bank will return two copies duly stamped to the depositor as token of having received the amount and forward the third copy of the challan to the Commission.</p>		
<p>6. Delivery of unclaimed shares or Modaraba certificates or Other instruments (1) The company within seven days of completion of notice period, shall deliver unclaimed shares or Modaraba certificates or other instruments, to the Commission, along with the report on Form C providing all the relevant details of such shareholders, certificate holders and other instruments as required under clause (b) of sub-section (2) of section 244 of the Act.</p>	<p>Phrase “within seven days of” replaced with word “on”</p>	<p>IEIRD</p>
<p>6. (2) The company shall also inform the Central depository Company (CDC); (a) for demat shares- to transfer the shares in favor of the Commission; and (b) for physical shares - to convert the share certificates into demat form and transfer in favor of the Commission.</p>	<p>As per our understanding, “demat shares” cannot be treated as unclaimed. Need to be revisited.</p>	<p>CDC</p>
<p>7.- Process of Sale (1) Subject to regulation (6), any unclaimed share, Modaraba certificates, dividend and Other instrument, delivered to the Commission shall be sold by the Commission.</p>	<p>The word “dividend” to be deleted as it is irrelevant here.</p>	<p>CDC</p>

<p>7. (2) In case the unclaimed shares, Modaraba certificates and Other instruments delivered to the Commission are listed, they shall be transferred in the Central Depository Company (CDC) account opened in the name of the Commission in demat form and the Commission shall sell those unclaimed shares, Modaraba certificates, dividend and Other instruments within 3 days after transfer in CDC account.</p>	<p>The word “dividend” to be deleted as it is irrelevant here.</p>	<p>CDC</p>
<p>7. (3) In case of unlisted shares and Other instruments, the Commission shall dispose of unclaimed shares and Other instruments through a tender process and the Commission may use breakup value of the share for reference while accepting or rejecting the highest bid received in the tender process.</p>		
<p>7. (4) The Commission shall deposit the proceeds of the sale to the Account after deducting expense incurred on the sale of that particular unclaimed share or Modaraba certificates and other instrument.</p>		
<p>8. Claiming a refund (1) Subject to sub-section (9) of section 244 of the Act, any person claiming to be entitled to any money credited to the Account, may apply to the Commission on a Form D along with such documents as provided in the said Form.</p>	<p>The following should be added in the regulations:</p> <ul style="list-style-type: none"> • It should be clearly mentioned that whether the refund amount may include only principal or both principal plus interest • It should be clearly mentioned that interest and principal amount should be separately disclosed within the fund and the definition of principal amount should be included in definitions. • The provision of unclaimed securities, deposit etc (either physical or electronic) under dispute and their treatment in light of fund. <p>Claim process for foreign shareholder and GDR holders also needs to be explained</p>	<p>SMD</p> <p>Hub Power</p>
<p>8. (2) The Commission after verification of claim from the company concerned forward to the Bank , to make the payment to entitled person of the sum equivalent to his unclaimed or unpaid dividend or amount of proceeds.</p>		
<p>9. Filling of annual return of all unclaimed shares, Modaraba certificates, the instruments or dividend: Every company shall within a period of thirty days of the close of each financial</p>		

<p>year, submit to the Commission the year-wise return of unclaimed shares, Modaraba certificates, dividend and Other instruments in its books of accounts on Form E along with the auditor certificate authenticating the year-wise amount of shares, Modaraba certificates, the instruments or dividend. The company shall also upload it on its own website, a searchable claimant wise statement having year-wise breakup of unclaimed shares, Modaraba certificates, dividends and Other instruments containing following information, namely:</p>		
<p>9. (a) the names and last known addresses of the persons entitled to receive the sum;</p>	<p>Insertion of CNIC number, Passport number or incorporation ID</p>	
<p>9. (b) the nature of amount;</p>		
<p>9. (c) the amount to which each person is entitled;</p>		
<p>9. (d) the due date for transfer into the Investor Education and Protection Fund; and</p>		
<p>9. (e) such other information as may be considered relevant by the Commission for this purposes.</p>		
<p>FORM A Final Notice</p> <p>To the shareholders or certificate holders or the owner, as the case may be, to file claim Pursuant to Regulation 4 of Unclaimed shares, modaraba certificates, dividend and Other instruments. [Regulation (4)]</p> <p>Notice is hereby given that the shares of company XYZ/ modaraba certificates of Modaraba XYZ issued/ dividend declared by company XYZ or Modaraba XYZ/Other instrument of the company XYZ; details whereof are appearing on the company's website www.xyz.org.pk have remained unclaimed or unpaid for a period of three years from the date these have become due and payable. That a notice was sent by registered post acknowledgment due on the last known addresses of the shareholders/ certificate holders/owners of other instruments to submit their claims within three months to the Company, but no reply there against has been received.</p>	<p>30 days' notice period to be given to shareholders instead of 15 days so as to give reasonable time to them.</p>	<p>CDC</p>

<p>That the Company hereby invites claims from the shareholders/ certificate holders/owners of Other instruments to be lodged within 15 days, and in case no claim is received within the given period from this Notice, the Company shall proceed to deposit the unclaimed/unpaid amount with the Federal Government pursuant to the provisions of sub-section (2) of section 244 of the Act.</p>		
<p align="center">FORM B Report in respect of amount of unclaimed dividend credited to Account within 7 days of such payment <i>[Regulation 5]</i></p>	<p>Columns for certificate # and distinctive # needs to be added for any inquiry and tracking in future</p>	<p>CDC</p>
<p align="center">FORM C Report in respect of unclaimed shares, modaraba certificates, the instruments while submitting unclaimed shares, modaraba certificates, the instruments to the Commission. <i>[Regulation 6]</i></p>	<p>Columns for certificate # and distinctive # needs to be added for any inquiry and tracking in future</p>	<p>CDC</p>
<p align="center">FORM D Claim for Refund <i>[Regulation 8]</i></p>	<p>In para 3 of the form following amendments be made to avoid confusion:</p> <ul style="list-style-type: none"> • “Client ID/Account Number” be deleted • Phrase “Kind of Share” be replaced with “Kind of securities (share / certificates / instrument)” • Phrase “Number of Shares ” be replaced with “Number of Securities” • Phrase “Total nominal amount of the share” be replaced with “Face Value of securities” <p>In para 4 of the form following amendments be made to avoid confusion:</p> <ul style="list-style-type: none"> • “(COD, COI)” be removed • “Client ID/Account Number” be deleted <p>Following phrase be removed from the list of attachments to be removed from Form D</p>	<p>CDC</p>

	“In case of refund of matured deposit (COI, COD), original certificate thereto”	
<p align="center">FORM E</p> <p>Annual Return of all unclaimed shares, modaraba certificates, the instruments or dividend in the books of account [Regulation 9]</p>	<ul style="list-style-type: none"> • Replace “Quantity/Amount” with “Amount” • Replace “Date amount credited” with “Date on which amount credited to Account or Securities delivered to the Commission 	CDC