

Consultation Paper

Proposed Draft Amendments to the Listed Companies (Substantial Acquisition of Voting Shares & Takeovers) Regulations, 2017

The objective of issuance of this Consultation Paper is to seek stakeholders' feedback as required under section 169 of the Securities Act, 2015 on the draft amendments in the Listed Companies (Substantial Acquisition of Voting Shares & Takeovers) Regulations, 2017.

SECP is fully empowered, at its discretion, to accept or not accept a recommendation in accordance with its mandate and policy objectives.

SECP reserves the right not to publish any submission received where SECP considers it not in the public interest to do so, such as where the submission appears to be libellous or offensive.

Date of Issuance: August 18, 2023

Last date for submission of comments: August 31, 2023

Email for feedback: takeoverfeedback@secp.gov.pk



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1. Executive Summary

This consultation paper is being published for the purpose of eliciting public opinion on draft amendments to the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Regulations, 2017 (Takeover Regulations) within a period of fourteen (14) days from the date of its placement on SECP website.

The Securities Act, 2015 (“the Act”) is the primary law governing takeovers in Pakistan. Sections 108-126 of the Act specify broader policy requirements for takeover transactions, whereas all procedural matters governing such transactions are covered under the Takeover Regulations.

The public consultation process is being initiated through the attached notification in terms of Section 169 of the Act which empowers the Securities and Exchange Commission of Pakistan (the “SECP”) to make regulations for matters pertaining to takeovers.

A consolidated version of the currently applicable Takeover Regulations can be accessed at <https://www.secp.gov.pk/document/listed-companies-substantial-acquisition-of-voting-shares-and-takeovers-regulations-2017-amended-upto-sep-30-2022-2/?wpdmdl=46165&refresh=64b7e643f3cbe1689773635>.

The SECP previously notified certain amendments to the Takeover Regulations vide S.R.O. 1828 (I)/2022 dated September 30, 2022 for making them more consistent with the Act and to align the regulations with international standards and best practices.

Since aforesaid notification of the amendments, the SECP has been evaluating impact of the proposed changes in context of possible improvements to the overall takeover regime. The instant draft amendments are being deliberated for bringing further clarity in the Takeover Regulations, and introducing further measures for protection of rights of the minority shareholders of the target company.

The major draft amendments being proposed to the Takeover Regulations are summarized in section 4 of this paper.

2. Objective of the Consultation Paper

This Consultation Paper is published for eliciting public opinion on the draft amendments to the Takeover Regulations.

3. Background

The SECP notified amendments to the Takeover Regulations vide S.R.O. 1828 (I)/2022 dated September 30, 2022. The amendments were introduced for making the regulations more consistent with the Act and to align the same with international standards and best practices.

Impact of the September 2022 amendments was being assessed continuously in line with SECP's ongoing mandate to improve upon the existing regulatory framework. The impact assessment methodology entailed review of views/feedback from stakeholders, review of developments in relation to takeover regimes in other jurisdictions and assessment of market perceptions regarding the overall takeover regime.

The instant draft amendments are accordingly being considered for bringing further clarity in the Takeover Regulations. The amendments intend to provide greater flexibility to the acquirer and shareholders of the target company with prime focus on protection of the rights of the minority shareholders.

4. Salient Features

The major areas of proposed amendments are summarized below:

- a) Insertion of following new definitions to enable consistent interpretation of these terms throughout the Takeover Regulations:
 - (i) "average daily traded volume";
 - (ii) "frequently traded shares";
 - (iii) "weighted average share price".
- b) Option is being inserted for consideration to the shareholders of the target company to be paid either wholly in cash; or if consideration is being offered in the form of securities, the same shall be accompanied with a wholly cash alternative.
- c) To ensure that shareholders of the target company are only given highly liquid securities, the types of securities to be offered as consideration is proposed to be restricted to shares of listed companies, listed debt instruments and government securities with remaining maturity of maximum 364 days.
- d) Mechanism for valuation of securities to be offered as consideration is being improved and criteria for shares of listed companies forming part of such consideration is proposed to be enhanced. Shares of listed company may be valued at the weighted average share price during 180 days preceding date of public announcement of public offer. For government securities the value is proposed to be calculated on the basis of applicable PKRV rates at the end of the day preceding the date of public announcement of public offer.

- e) It is being ensured that only highly liquid securities are acceptable as security to be furnished to manager to the offer by the acquirer for performance of obligations under the public offer. After the proposed changes, the Takeover Regulations would allow cash, bank guarantee, government securities with sufficient maturity, MTS eligible securities or a combination of all these options to be furnished as security by acquirer.
- f) Minor changes are also proposed to bring uniformity in the regulations and make the same more consistent with terminologies used in the Securities Act, 2015.

Draft notification of proposed amendments is available at the following link on SECP website:

<https://www.secp.gov.pk/document/s-r-o-1086-i-2023-draft-amendments-to-the-listed-companies-substantial-acquisition-of-voting-shares-and-takeovers-regulations-2017/?wpdmdl=48877&refresh=64df0acb257991692338891>

5. Format for sharing feedback/comments

Any feedback be sent via email to Primary Market Approvals and Development Department (PMADD) at takeoverfeedback@secp.gov.pk or by post at the following address:

Head of Department,
Primary Market Approvals & Development Department,
NICL Building, SECP Head Office,
Jinnah Avenue, Blue Area,
Islamabad.

Name			
Name of the Related Entity			
Sr. No.	Regulation/ Section No.	Proposed Changes	Rationale
Confidentiality			
<i>If you wish to keep all or any part of your submissions and your identity confidential, please indicate the same. In all other cases, your provided comments will be made public, except your contact information.</i>			

6. Indicative Timeline

Stage	Date/Timeline	Detail
1	August 18, 2023	SECP releases Consultation Paper
2	Within 14 days of issuance of Consultation Paper and placement of notification on SECP website.	Public Comments
3	Within 30 days of receipt of comments on the Consultation Paper.	Stakeholders consultation session
4	Within 30 days of conclusion of the stakeholder consultation sessions.	Notification of the final amendments of the Takeover Regulations.
