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**SECP GUIDELINES FOR COOPERATION  
AND ASSISTANCE TO FOREIGN  
REGULATORY AUTHORITIES**  
(Revised as on 24<sup>th</sup> April 2020)

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## **1. Purpose of Guidelines on “International Cooperation and Assistance”**

Strong international cooperation is important to facilitate the detection and deterrence of cross-border misconduct and to assist in the discharge of licensing and supervisory responsibilities. Securities and Exchange Commission of Pakistan (SECP) recognizes the importance of international cooperation and assistance among jurisdictions for effective and appropriate resolution of cross-border regulatory and enforcement issues to protect investors and, policyholders and combat cross border violations of laws.

Section 35, sub-section 6, clause (c) of SECP Act, 1997 (XLII of 1997) (“the Act”) on “Obligation of Confidentiality” allows the disclosure of the information to the government, or an agency of the government, of a foreign country to assist the agency of the foreign government, to perform a function, or exercise a power, conferred by a law in force in that foreign country. However, the said section was insufficient to cater for the special need of SECP with regarding to international cooperation and assistance.

Hence, in 2016, a new independent Section 42D regarding international cooperation and assistance to foreign regulatory authority was inserted in the Act through SECP (Amendment) Act, 2016 (XXXVI of 2016) to address the concerns and needs of SECP’s on the subject of international cooperation and assistance. The section authorizes the Commission to seek and provide assistance on reciprocal basis, to international regulators for assisting in any inquiry or investigation for contravention of laws relating to financial services. The law authorizes the Commission to require the production of any information or document from any person on the request of the requesting authority. Such assistance is provided without regard to whether the [alleged contravention]<sup>1</sup> would constitute a violation of the laws administered by the SECP.

These Guidelines for Cooperation and Assistance to Foreign Regulatory Authorities provides a framework for international cooperation under section 42D and to stipulate formal mechanisms for sharing information and assistance under the Act or any administered legislation. The said guidelines are issued in exercise of powers conferred under section 40B of the Act.

## **2. Scope of Cooperation**

SECP can provide assistance not only in investigations but also in other types of inquiry, as part of a compliance program for preventing illicit activities. It can also exchange general information about matters of regulatory concern, including financial and other supervisory information, technical expertise, surveillance and enforcement techniques, [AML/CFT information]<sup>2</sup> and investor education. The [ ]<sup>3</sup> assistance may include:

- [obtaining public or non-public information or document, for example, about a license holder, company (private/public) , management, directors, shareholder, record that

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<sup>1</sup> Substituted for the words “conduct in question” vide Decisions of the Commission in its 26<sup>th</sup> meeting, held on 24<sup>th</sup> April 2020.

<sup>2</sup> Inserted vide Decisions of the Commission in its 26<sup>th</sup> meeting, held on 24<sup>th</sup> April 2020.

<sup>3</sup> Deleted the words “form of” vide Decisions of the Commission in its 26<sup>th</sup> meeting, held on 24<sup>th</sup> April 2020.

identify the beneficial owner or a person exercising control over a license holder or a company;]<sup>4</sup>

- obtaining banking, brokerage or other records;
- obtaining voluntary cooperation from those who may have information about the subject of an inquiry;
- providing information on the regulatory processes, or in obtaining court orders, for example, urgent injunctions;
- Providing and obtaining unsolicited information, on voluntary basis.

### **3. Confidentiality and Disclosure of Information**

The SECP has the ability to provide non-public information or document filed with or provided to the Commission, or obtained by the Commission from any person, to the foreign regulatory authorities, upon a showing that such information is needed by the foreign regulatory authority.

The authority requesting information must establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of information, and provide assurances of confidentiality to the Commission, that includes the assurances that the authority will not, without the written consent of the Commission:

- a) Disclose the information to a person who is not an officer, employee, professional advisor or agent of the body corporate; or
- b) Use the information otherwise than for the purpose of monitoring compliance with, enforcing or performing functions or exercise powers [under the laws for the time being in force or any rules and regulations made thereunder].<sup>5</sup>

The SECP when requesting such non-public information from any foreign regulatory authority shall establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of information and documents, and provide assurances of confidentiality to the foreign regulatory authority, including assurances that the SECP will:

- Use the confidential information received for no other purpose than those specified in the request;
- make no public use of the information without prior approval of the foreign regulatory authority; notify the foreign regulatory authority of any legally enforceable demand for

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<sup>4</sup> Substituted the words “obtaining public or non-public information, for example, about a license holder, listed company, shareholder, beneficial owner or a person exercising control over a license holder or company;” vide Decisions of the Commission in its 26<sup>th</sup> meeting, held on 24<sup>th</sup> April 2020.

<sup>5</sup> Substituted the words “under-

- i. The laws for the time being in force or
- ii. The rules and regulations”

vide Decisions of the Commission in its 26<sup>th</sup> meeting, held on 24<sup>th</sup> April 2020.

the information prior to complying with the demand, and assert such legal exemptions or privileges on the foreign regulatory authority's behalf as it may request; and

- not grant any other demand or request for the information without prior notice to and lack of objection by the foreign regulatory authority.

#### **4. Accepting or Declining an International Cooperation Request**

[SECP by practice, does not place unreasonable restrictive conditions on the provision of exchange of information with its foreign counterpart authorities. Specifically,]<sup>6</sup> Section 42D (7) provides that any assistance provided to any foreign regulatory authorities or international organizations may be refused by the Commission on the grounds of;

1. national security, and
2. public interest.

[Anything detrimental to the public interest may be refused. Public interest means the general welfare of the public that warrants recognition and protection, something in which the public as a whole has a stake especially an interest that justifies governmental regulation.

Despite the vagueness of the term, public interest is claimed generally by governments in matters of state secrecy and confidentiality. The purpose of government and law is to serve the common people therefore anything that is repugnant to its purpose may be refused. SECP while considering a request, shall weigh the effects of disclosure on public interest. The Commission reserves to withhold information in case it is detrimental to public interest.

The provision of exchange of information or assistance should not be refused on the grounds that:

- a) the request is also considered to involve fiscal matters;
- b) laws require financial institutions to maintain secrecy or confidentiality;
- c) there is an inquiry, investigation or proceeding underway, unless the assistance would impede that inquiry, investigation or proceeding; and/or
- d) the nature or status (civil, administrative, law enforcement, etc.) of the requesting counterpart authority is different.]<sup>7</sup>

In deciding whether to provide such assistance, the Commission shall consider whether;

- a) the requesting authority has agreed to provide reciprocal assistance in financial services matters to the Commission; and
- b) compliance with the request would prejudice the public interest or the national security of Pakistan and
- c) appropriate assurance of confidentiality.

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<sup>6</sup> Inserted vide Decisions of the Commission in its 26<sup>th</sup> meeting, held on 24<sup>th</sup> April 2020.

<sup>7</sup> Inserted vide Decisions of the Commission in its 26<sup>th</sup> meeting, held on 24<sup>th</sup> April 2020.

## **5. Mechanism for international cooperation and Information Sharing**

The SEC can provide and obtain enforcement-related international cooperation and assistance on a multilateral, bilateral, and ad hoc basis. Multilateral and bilateral information sharing arrangements operate on the basis of memoranda of understanding (MOU) between the financial services regulatory authorities. Such MOUs delineate the terms of information sharing between and among MOU signatories and create a framework for regular and predictable cooperation in the law enforcement. Multilateral and bilateral MOUs detail the scope and terms of information sharing among regulators.

### **a. IOSCO Multilateral Memorandum of Understanding**

In 2002, the International Organization of Securities Commissions (IOSCO) created a Multilateral Memorandum of Understanding (MMOU), the first global multilateral information-sharing arrangement among securities regulators. In 2011, SECP became signatory to IOSCO MMoU.

As of 2016, 109 securities and derivatives regulators had become signatories to the MMOU. Pursuant to the MMOU, signatories agree, among other items, to provide certain critical information, to permit use of that information in civil or administrative proceedings, to onward share information with self-regulatory organizations and criminal authorities, and to keep such information confidential.

The MMOU has significantly enhanced the SECP's enforcement program by increasing and expediting the SECP's ability to obtain information from a growing number of jurisdictions worldwide. Moreover, the MMOU has created incentives for SECP to enact section 42D in the Act, which enabled it to engage in effective information sharing.

### **b. IAIS Multilateral Memorandum of Understanding**

The International Association of Insurance Supervisors (IAIS) as the international standard setter in the field of insurance regulation, which promotes effective international cooperation for information sharing among member for strengthening insurance supervisory regimes. IAIS adopted in 2007, a multilateral memorandum of understanding (IAIS MMoU) as an international benchmark for cooperation and information sharing among IAIS Members. The MMoU specifies the type of information that each signatory must be able to provide on request by another signatory not only for crises, but also in insurance industry supervisors day-to-day business, thereby promoting the financial stability of cross-border insurance operations.

SECP, considering that accession to IOSCO MMoU is material for credibility of Pakistan's insurance markets, has initiated the process to subscribe to the IAIS MMoU

### **c. Bilateral Memoranda of Understanding**

Since 2003, SECP has signed 13 bilateral memoranda of understandings (MOUs) with the counterpart securities authorities from the jurisdictions including; UAE, Oman, Jordan, Morocco, Turkey, China, Iran, India, Maldives, Australia, Bhutan and Sri Lanka. Similarly, SECP has inked two MOUs with counterpart insurance regulatory authorities of Turkey and Iran.

SECP has also signed bilateral MoUs with 21 members' countries of European Securities Market Authority, for information sharing related to the supervision of the Alternative Investment Fund Managers. These member countries include Netherlands, Ireland, Portugal, Romania, Luxembourg, Cyprus, Sweden, Denmark, Latvia, Estonia, Poland, United Kingdom, Bulgaria, Greece, Lithuania, Malta, Slovak Republic, Hungary, Iceland, Norway and Liechtenstein.

These bilateral MOUs contain detailed provisions on use and confidentiality of information. The assistance available under the current MOUs varies in scope depending on the underlying statutory authority of the regulators that are party to the MOU.

Bilateral MOUs have proven important for SECP's international cooperation needs and, as such, the SECP considers these bilateral arrangements to be an excellent supplement to the information sharing mechanism of the MMOUs established by IOSCO and IAIS.

In light of the IOSCO MMOU, the SECP's international regulatory cooperation strategy for bilateral MoUs, aims achieving greater convergence of technical rules and procedures through regulatory dialogues with the counterpart authorities in the circumstances; as under;

- a) The MOU has been initiated at the Government Level
- b) Strong bilateral ties, including trade and political affiliations exist between the jurisdiction
- c) Where it is felt that regional cooperation will be enhanced
- d) The primary focus of the MoU is mutual technical assistance or capacity building

**d. Ad Hoc & Other Arrangements for Enforcement Cooperation**

Although MOUs facilitate enforcement cooperation, such arrangements are not a prerequisite for the SECP to cooperate with foreign authorities regarding enforcement matters. The SECP also cooperates on an ad hoc or on case-to-case basis with foreign regulators with whom it has no bilateral MOU, or who are not yet signatories to IOSCO MMOU. In such cases, a confidentiality agreement must be signed before any such information is exchanged.

**6. How a Foreign Regulatory Authority Can Request Assistance**

All requests received from multilateral or bilateral forums / regulators / organizations must be made in accordance to terms and conditions as specified in the information sharing agreement (MMoU / MoU). Such MOUs including the IOSCO MMoU outline how requests for assistance should be made.

SECP recognize that foreign regulatory authorities, with whom the SEC may not have bilateral MoU or who are yet to be signatory of IOSCO MMoU, may have questions regarding the preferred format and content of requests for information and assistance. Such authorities may wish to refer to Appendix C to the IOSCO MMOU (APPENDIX C). Subject to certain considerations as set forth in these Guidelines and subject to appropriate assurances of confidentiality, the SECP will review all incoming requests for assistance to determine if assistance may be granted.

SECP's [International Relations Department]<sup>8</sup> assists in all cases of cross-border investigations and prosecutions pertaining to financial services, and negotiates international information-sharing arrangements with foreign regulators. Questions may be directed to SECP through the special link provided at the SECP website at [international.affairs@secp.gov.pk](mailto:international.affairs@secp.gov.pk)

## **7. Complaints Regarding Violation of Laws Administered by SECP in Pakistan**

Investors that are located outside of the Pakistan may lodge their query and complaint with SECP related to investments or concerning licensed entities or public listed companies' through the SECP Query/Complaint link at <http://sdms.secp.gov.pk/> or may call on SECP Toll Free No. +92 51 080088008.

SECP's [International Relations Department]<sup>9</sup> assists expeditious processing of all such complaints received through the online link.

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<sup>8</sup> Substituted the words "*Investor Education and International Relations Department*" vide Decisions of the Commission in its 26<sup>th</sup> meeting, held on 24<sup>th</sup> April 2020.

<sup>9</sup> Substituted the words "*Investor Education and International Relations Department*" vide Decisions of the Commission in its 26<sup>th</sup> meeting, held on 24<sup>th</sup> April 2020.