

Government of Pakistan
Securities and Exchange Commission of Pakistan

Islamabad, the 25th November, 2022

NOTIFICATION

S.R.O. 2066 (I)/2022.—The following draft of the Unlisted Companies (Buy-Back of Shares) Regulations, 2022, proposed to be made by the Securities and Exchange Commission of Pakistan, in exercise of the powers conferred by sub-section (1) of section 512 read with section 88 of the Companies Act, 2017 (XIX of 2017), are hereby published for information of all persons likely to be affected thereby and notice is hereby given that comments, suggestions or objections, if any, received within a period of fourteen days from the date of its publication in the official Gazette, shall be taken into consideration, namely:—

DRAFT REGULATIONS

CHAPTER I
PRELIMINARY

1. Short title, commencement and applicability. - (1) These regulations shall be called the Unlisted Companies (Buy-Back of Shares) Regulations, 2022.

(2) They shall come into force at once.

(3) These regulations shall be applicable to buy-back of shares of Unlisted companies, in pursuance of section 88 of the Companies Act, 2017 (XIX of 2017).

2. Definitions. - (1) In these regulations, unless there is anything repugnant in the subject or context, -

- (a) "Act" means the Companies Act, 2017 (XIX of 2017);
- (b) "Annexure" means annexure appended to these regulations;
- (c) "purchase" means buy-back of its own shares by a purchasing company under section 88 of the Act and these regulations;
- (d) "purchasing company" means a public unlisted or a private limited company that intends to purchase its own shares under section 88 of the Act and these regulations; and

- (e) “purchase period” means the period of sixty days commencing from the date of dispatch of the offer letter.

(2). All other words and expressions used but not defined in these regulations shall have the same meanings as are assigned to them in the Act and the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997).

CHAPTER II ELIGIBILITY FOR PURCHASE

3. Eligibility Requirements for the Purchase. -(1) A public unlisted or a private company, fulfills the following conditions: -

- (a) It has distributable profits or reserves for the purpose of purchase of its own shares;

Provided that if the purchasing company is engaged in any business activity which is subject to license or approval under any law, it has obtained permission from the relevant department or the authority in respect of the purchase;

- (b) the purchase is authorized by its articles of association;
- (c) it has obtained approval of its members for purchase through special resolution;
- (d) the purchase is recommended by the board through resolution and the board of directors has undertaken through a resolution that the funds specified for the purchase are available with the purchasing company and after the purchase, the purchasing company is capable of meeting all its financial obligations on time during the period up to the end of the immediately succeeding twelve months;
- (e) the secured creditors of the company have no objection to the proposed purchase of shares by the purchasing company;
- (f) the board of directors of a purchasing company shall not propose or recommend a purchase in any of the following circumstances namely: -
 - (i) its winding up proceedings have commenced;
 - (ii) a scheme of arrangement, compromise, reconstruction, merger or demerger is approved by the board of directors

unless the purchase is a part of such arrangement, compromise, reconstruction, merger or demerger; and

- (iii) it is not compliant with the provisions of the Act, rules and regulations framed thereunder.

4. Procedure for Purchase-(1) The board of directors of the purchasing company shall recommend and approve the purchase of shares specifying the number of shares proposed to be purchased, purpose of the purchase, purchase price, period within which the purchase shall be made, source of funds, justification for the purchase and effect on the financial position of the company.

(2) The general meeting in which the special resolution is to be passed shall be held not later than forty-five days of the date of the meeting of the board of directors in which the purchase is approved.

(3) The notice of the general meeting shall be accompanied by the statement specifying at least such information as contained in sub-regulation (1) alongwith a declaration as per format appended with the annexure to these regulations, signed by at least two directors, one of whom may be chief executive, on behalf of the board of directors, to the effect that the board has made full enquiry into the affairs of the company and have concluded that the company is capable of meeting its liabilities and will not be rendered insolvent for twelve months from the date of declaration adopted by the board.

(4) Within **three** days of passing of the special resolution, the purchasing company shall dispatch the offer letter to all the existing members of the company signed by at least two directors, limiting a time not exceeding **fifteen** days from the date of the offer, through registered mail or courier or electronic mode of communication:

Provided that if the offer is not accepted within the specified time period, the offer shall be deemed to be declined.

(5) The offer for purchase of shares made to members of the purchasing company shall be in proportion to the existing shares already held by them:

Provided that if all the members entitled to attend and vote at any meeting convened to approve purchase of shares so agree, a resolution may be proposed and passed unanimously for purchase of shares on non-proportionate basis.

(6) The members shall submit acceptance or decline letter as the case may be, to the purchasing company and in case of acceptance, shall also surrender physical share certificates and/or authorization for shares held in book entry form subject to the procedure specified under the relevant law, rules or regulations, within **fifteen days** of the date of offer.

(7) The payment for accepted shares shall be made by the purchasing company through banking channel not later than **seven days** of the close of the offer.

(8) If the whole or any part of the shares offered is declined by any member, the directors shall offer such shares within a period of **seven** days from the close of the offer, to other members of the company in proportion to the existing shares already held by them.

5. Cancellation of the Purchased Shares and Procedure. - All shares that have been purchased shall be deemed to be cancelled immediately after completion of the purchase, however following procedure shall be followed by the purchasing company:

- (a) where the shares purchased are in physical form, these shall be marked as cancelled within seven days of the completion of purchase;
- (b) where the shares purchased are in book entry form, it shall follow the procedure prescribed by the relevant depository for cancellation of such shares.

CHAPTER III OBLIGATIONS AND RESTRICTIONS

6. Obligations of the Purchasing Company. - The purchasing company shall: -

- (a) send the notice of general meeting along with the relevant information and documents to all the members of the company;
- (b) dispatch letter of offer as referred to in regulation 4 to the members;
- (c) make payment for purchase of shares in cash through banking channel which shall be out of the distributable profits or reserves specifically maintained for the purpose;
- (d) mark physical shares as cancelled and ensure that for shares in book entry form prescribed procedure for cancellation is duly followed;
- (e) file with the registrar the relevant special resolution within fifteen days of the date of the special resolution;
- (f) file with the registrar relevant statutory return within fifteen days of the cancellation of shares;
- (g) file with the Registrar, Final Return on the format as per Annexure-A to these regulations along with statement of compliance by all the directors including chief executive as per Annexure-A1 within fifteen days of the completion of the process of purchase.

7. Restrictions on the Purchasing Company. - The purchasing company shall not:-

- (a) apply for voluntary winding up within a period of twelve months of the close of the purchase period;
- (b) make a purchase before the expiry of six months from the last date of subscription by shareholders in respect of any further issue of capital;
- (c) be *ipso facto* converted into another kind of company after the purchase of shares in case number of members of the purchasing company is reduced below the minimum prescribed number for that kind of company:

Provided that the purchasing company shall follow all the requirements prescribed for conversion of status of the company under the relevant laws;

- (d) purchase its own shares if, as a result of the purchase, there would no longer be any member of the company holding shares.

CHAPTER IV MISCELLANEOUS

8. Power to give directions: - Without prejudice to the provisions of section 466 of the Act, where the Commission is satisfied, on its own motion or on the basis of any information received by it, that it is necessary and expedient -

- (a) in the interest of the shareholders of the purchasing company; or
- (b) in the interest of investors; or
- (c) to prevent the abuse of law or the process laid down in these regulations;

It may issue directions to the purchasing company, any of its directors, officers, or any other person; including but not limited to-

- (i) stopping the purchasing company at any stage from making the purchase or sale, as applicable;
- (ii) do or desist from doing such acts as the Commission may determine; and
- (iii) carry out such steps as are necessary to rectify the situation.

9. **Penalty for contravention of Regulations:** Whoever fails or refused to comply with, or contravenes any requirements of the regulations shall be punishable with penalty as provided under sub-section (2) of section 512 of the Act.

Annexure-A
[Section 88 and Regulation 6(g)]

THE UNLISTED COMPANIES (BUY-BACK OF SHARES) REGULATIONS, 2022

FINAL RETURN
PART-I

(Please complete in typescript or in bold block capitals.)

1.1	CUIN (Registration Number)	<table border="1" style="width: 100%; height: 20px; border-collapse: collapse;"> <tr> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> </tr> </table>								
1.2	Name of the Company	<table border="1" style="width: 100%; height: 20px; border-collapse: collapse;"> <tr> <td style="width: 100%;"></td> </tr> </table>								
1.3	Fee Payment Details	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%; vertical-align: top;">1.3.1</td> <td style="width: 30%; vertical-align: top;">Challan No.</td> <td style="width: 20%; text-align: center;"> <table border="1" style="width: 100%; height: 20px; border-collapse: collapse;"> <tr> <td style="width: 100%;"></td> </tr> </table> </td> <td style="width: 20%; vertical-align: top;">1.3.2</td> <td style="width: 10%; vertical-align: top;">Amount</td> <td style="width: 10%; text-align: center;"> <table border="1" style="width: 100%; height: 20px; border-collapse: collapse;"> <tr> <td style="width: 100%;"></td> </tr> </table> </td> </tr> </table>	1.3.1	Challan No.	<table border="1" style="width: 100%; height: 20px; border-collapse: collapse;"> <tr> <td style="width: 100%;"></td> </tr> </table>		1.3.2	Amount	<table border="1" style="width: 100%; height: 20px; border-collapse: collapse;"> <tr> <td style="width: 100%;"></td> </tr> </table>	
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PART-II

2. Share Capital

2.1	Paid up capital (number of shares before buy back)	<table border="1" style="width: 100%; height: 20px; border-collapse: collapse;"> <tr> <td style="width: 100%;"></td> </tr> </table>	
2.2	Number of shares purchased	<table border="1" style="width: 100%; height: 20px; border-collapse: collapse;"> <tr> <td style="width: 100%;"></td> </tr> </table>	
2.2	Paid up Capital (number of shares after purchase of [buy back])	<table border="1" style="width: 100%; height: 20px; border-collapse: collapse;"> <tr> <td style="width: 100%;"></td> </tr> </table>	
2.3	Kind of Shares purchased	<table border="1" style="width: 100%; height: 20px; border-collapse: collapse;"> <tr> <td style="width: 100%;"></td> </tr> </table>	
2.4	Class of shares purchased	<table border="1" style="width: 100%; height: 20px; border-collapse: collapse;"> <tr> <td style="width: 100%;"></td> </tr> </table>	
2.5	Source of funds utilized		
	(i) Distributable profit, and / or	<table border="1" style="width: 100%; height: 20px; border-collapse: collapse;"> <tr> <td style="width: 100%;">mention amount</td> </tr> </table>	mention amount
mention amount			
	(ii) Reserves	<table border="1" style="width: 100%; height: 20px; border-collapse: collapse;"> <tr> <td style="width: 100%;">Mention amount</td> </tr> </table>	Mention amount
Mention amount			
2.6	Dates relevant to purchase (buy-back) of shares		
	Activity	dd-mm-yy	
	Last purchase before present purchase (buy-back)		

Board of directors meeting held on	
Notice for general meeting issued on	
General meeting in which special resolution was passed	
Offer letter	
Subsequent offer letters, if any	
Offer acceptance deadline date	
Completion of purchase process	
Cancellation of shares	

2.7 Detail of purchase (buy-back) of shares

Total number of shares tendered/surrendered for purchase (Buy-back)	
Total number of shares accepted for purchase (buy-back)	
Purchase price per share (Rs.)	
Period during which offer remained valid	
*Date-wise and shareholders wise breakup	<i>As per format given below</i>
Criteria/procedure adopted for acceptance of shares	
Amount, date and mode of payment against the shares accepted for buy-back	
Number of shares cancelled after buy-back	

*Date-wise and shareholders wise breakup

Date(s) of purchase / Buy-back of shares	Name of shareholder in full	Number of shares purchased	Number of shares held by shareholder, if any after buy-back of shares	CNIC No./NICOP/Passport No. of member / Registration Number, if any (in case of other than natural person)
(1)	(2)	(3)	(4)	(5)
dd-mm-yy				<i>Please enter CNIC No. without (-)</i>

2.8 Names of shareholders and their shareholding after completion of process of buy-back:

S#	Folio #	Name	Address	Nationality	No. of shares held

PART-III

3.1 Declaration:

I do hereby solemnly and sincerely declare that the information provided in the form is:

- (i) true and correct to the best of my knowledge, in consonance with the record as maintained by the Company and nothing has been concealed; and
- (ii) hereby reported after complying with and fulfilling all requirements under the relevant provisions of law, rules, regulations, directives, circulars and notifications whichever is applicable.

3.2 Name of Authorized Officer with designation/Authorized Intermediary

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3.3 Signatures

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3.4 Registration No. of Authorized Intermediary, if applicable.

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3.5 Date

Day		
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Month			
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Year			
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Encl:

- 1- Resolution(s) of Board of Directors recommending the purchase
- 2- Notice of meeting along with relevant attachments
- 3- Copy of special resolution
- 4- Offer Letters
- 5- Acceptance and Decline Letters
- 6- Statement of compliance by all Directors/CEO as per Annexure-A1

-.-.-

STATEMENT OF COMPLIANCE BY ALL DIRECTORS & CEO

We, being the directors and the CEO of (name of the purchasing company), do hereby solemnly and sincerely state the:

- I) The Company is fully compliant with all applicable laws, rules and regulations;
- II) The Company has complied with the provisions of the Companies Act, 2017 as well as the Unlisted Companies (Buy-Back of Shares) Regulations, 2022 during the process of buy-back of shares of the Company.

That whatever has been stated above is true and correct to the best of our knowledge and belief.

(Signed by all the directors including CEO with names, Designations, residential addresses and CNIC numbers)

Date: _____
Place: _____

(To be printed on stamp paper of requisite value)
[Regulation 4(3)]

DECLARATION

We, being the directors/CEO of (name of the purchasing company), do hereby solemnly and sincerely declare that we have made a full inquiry into the affairs of the company and that, having done so, have formed the opinion that;

• the funds required for the purchase of shares are available with the purchasing company	
• the assets of the purchasing company are more than the liabilities of the purchasing company at the date of declaration.	
• there is no ground on which the purchasing company is unable to pay its debts.	
• the purchasing company will remain solvent for the period of twelve months from the date of declaration.	

And we are fully aware/understand;

<ul style="list-style-type: none">• of the fact that in case we make any false statement about any of the above matters, we shall be liable for civil as well as criminal consequences in terms of section 88 and 496 of the Companies Act, 2017.	
<ul style="list-style-type: none">• that there is no shareholding or management dispute in the purchasing company.	
<ul style="list-style-type: none">• that whatever stated above is true and correct to the best of our knowledge and belief.	

Deponents


(Signed with names, Designations, residential addresses and CNIC numbers)

Date: _____

Place: _____

Verified/Attested by
Class-I Magistrate / Oath Commissioner /
Notary Public
Seal of Attesting Officer

[File. No. LRD/CRD/60218/2022]


(Bilal Rasul)
Secretary to the Commission