

PART II

Statutory Notifications (S. R. O.)

GOVERNMENT OF PAKISTAN

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

NOTIFICATION

Islamabad, the 14th November, 2018

S.R.O. 1399 (I)/2018.- In exercise of powers conferred under section 512 read with sections 58 and 83 of the Companies Act 2017 (XIX of 2017) the Securities and Exchange Commission is pleased to notify the following regulations, the same having been previously published in the official Gazette vide Notification No. S.R.O.769(I)/2018 dated June 13, 2018, as required under proviso to sub-section (1) of the said section 512, namely:-

CHAPTER 1

PRELIMINARY

1. Short Title and Commencement.- (1) These regulations shall be called Companies (further issue of shares) Regulations, 2018.

(2) They shall come into force at once.

(3) These regulations shall apply to companies issuing further capital by way of:

- (i) right shares;
- (ii) other than right shares;
- (iii) bonus shares;
- (iv) employee stock option schemes; and
- (v) shares with differential rights including preference shares.

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

- (i) “Act” means Companies Act, 2017 (XIX of 2017);
- (ii) “convertible debt instrument” means an instrument which creates or acknowledges indebtedness and is convertible into shares of the company at a later date with or without the option of the holder of the instrument;
- (iii) “convertible security” means a security which is convertible into shares of the company at a later date, with or without the option of the holder of the security and includes convertible debt instrument and convertible preference shares;
- (iv) “issue of share at discount” means issue of share at a price below par value of such share;
- (v) “further issue of shares” means issue of shares under section 83 of the Act and does not include IPO or offer for sale of shares by any person holding shares in listed company;
- (vi) "employees compensation" means the total cost incurred by a company towards gross salary of its employees;
- (vii) "exercise" means making of an application by an employee to a company for issue of shares against option vested in him in pursuance of a Scheme;
- (viii) "exercise period" means the time period after vesting within which an employee should exercise his right to apply for shares against an option vested in him in pursuance of the Scheme;
- (ix) "exercise price" means the price payable by an employee for exercising an option granted to him in pursuance of a Scheme;
- (x) “initial public offer or IPO” means first time offer of securities to the general public;
- (xi) “issue” means further issue of shares;
- (xii) “issue size” means the total number of shares issued or to be issued by a company;
- (xiii) “issue price” means the price per share at which shares are offered or issued;
- (xiv) “issue of shares other than right” means issue of shares to any specific person or group of persons or body corporate;
- (xv) “market price” for purpose of employee stock option scheme means latest available closing price on a securities exchange on which the shares of the company are listed

and where share price is not traded on a given date, then the share price on the last trading day shall be considered;

- (xvi) "option" means a right but not an obligation granted to an employee in pursuance of a Scheme to apply for shares of a company at a pre- determined price;
- (xvii) "preference shares" means shares having preferential rights and privileges, as per the articles of association of the company, in view of one or more of the following:
 - (a) carry preferential right over the rights of ordinary shareholders to receive dividend; preference dividend may be cumulative or non-cumulative;
 - (b) carry preferential right over the rights of ordinary shareholders to participate in profits of company;
 - (c) carry right, at the option of holders or issuer or company, to be convertible or non-convertible into ordinary shares;
 - (d) carry right, at the option of holders or issuer or company, to be redeemed or remain irredeemable;
 - (e) carry preferential right over the rights of ordinary shareholders to be paid in event of winding up; and
 - (f) voting and non-voting rights
- (xviii) "right issue" means an offer of shares by a company to respective class of existing shareholders in the exact proportionate shareholding as on the record date fixed for the said purpose;
- (xix) "scheme" means the Employees Stock Option Scheme (ESOS) approved by the Commission;
- (xx) "schedule" means the schedule appended with these regulations.
- (xxi) "vesting" means exercise of right to apply for shares of a company; and
- (xxii) "vesting period" means the period during which the vesting of an option granted to an employee in pursuance of a scheme takes place.

(2) All terms and expression used but not defined in these regulations shall have the same meaning as assigned to them in the Act, Securities Act, 2015 (III of 2015) and the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997).

CHAPTER II
RIGHT ISSUE

3. Conditions for right issue.- (1) Subject to requirements of section 83 of the Act, a company issuing right shares shall, in addition to the requirements of clause (a) of sub-section (1) of said section 83, comply with the following general conditions, namely. –

- (i) the listed company shall not make a right issue within one year of an issue of capital to the public or further issue of capital through right issue:

Provided that this clause shall not be applicable to a right issue made for meeting the minimum equity or paid up capital requirements under any law;

- (ii) the time period of one year referred to in clause (i), shall be reckoned from the last date for public subscription of such issue and in case of previous right issue, shall be reckoned from the last date for payment for such previous right issue;
- (iii) board shall approve the decision to increase share capital and the said approval shall be considered as right announcement;
- (iv) Fractional shares shall not be offered and all fractions less than a share shall be consolidated and disposed of by the company and the proceeds from such disposition shall be distributed in due course by the company in the manner provided under applicable law and articles of association of the Company;
- (v) the decision of board shall clearly state the following-
 - (a) quantum of the issue i.e. as percentage of existing paid up capital;
 - (b) issue size;
 - (c) issue price;
 - (d) purpose or justification of right issue;
 - (e) benefits to the company and shareholders and underlying risks, if any;

- (f) justification for issue of shares at par, premium or below par value (if applicable);
 - (g) statement by board that the requirements of Act and regulations have been considered by board and shall be duly complied by company;
- (vi) where an announcement of the issue of bonus and right shares is made simultaneously, the resolution of the board shall specify whether such bonus shares qualify for right entitlement or not;
- (vii) the decision of board for right announcement shall be communicated to the Commission on the same day and in case of a listed company, in addition to the above, such decision shall also be communicated to the securities exchange on the same day;
- (viii) a listed company shall provide financial projections or plans, signed by all the directors approving right issue, justifying the benefits of the such right issue to the Commission, not later than three days from the date of decision of the board:
- Provided that any director not agreeing with the proposed plan shall record his dissent while signing the document;
- (viii) In case of listed companies, the letter of offer under Section 83 of the Act and information specified in Schedule I to these Regulations, shall be sent to members along with an attested copy of the extract of resolution of meeting of board of directors passing the right issue.

(2) In case of a listed company, a premium may be charged on right shares up to the free reserves per shares as certified by auditors of the company and the said certificate shall be submitted to the Commission and securities exchange along with announcement of right issue.

Provided that a listed company whose average closing market price of share, in any of the preceding six month has remained below par value or whose breakup value per share as per the latest available audited or reviewed financial statements is below par value shall not issue shares at premium.

Provided further that a listed company may charge premium on right issue above the free reserves per share subject to the following conditions—

- (i) directors and sponsors shall provide an undertaking to the Commission that they will subscribe the right shares to be offered to them;
- (ii) remaining balance of right issue shall be underwritten by underwriter(s), not being associated company or associated undertaking; and
- (iii) directors and sponsors of the company shall deposit the amount of their subscription before the book closure date.

Explanation.— For the purposes of this regulation the expression “free reserves” includes any amount which, has been set aside out of revenue or other surpluses after adjustment of all intangible or fictitious assets, is free and that it is not retained to meet any diminution in value of assets, specific liability, contingency or commitment known to exist at the date of the balance sheet, but does not include-

- (i) reserves created as a result of re-valuation of fixed assets;
- (ii) goodwill reserve;
- (iii) depreciation reserve to the extent of ordinary depreciation or otherwise as admissible under the Income Tax Ordinance, 2001 (XLIX of 2001);
- (iv) development allowance reserve created under the provisions of the Income Tax Ordinance, 2001 (XLIX of 2001);
- (v) provisions for taxation to the extent of the deferred or current liability of the company;
- (vi) capital redemption reserve; and
- (vii) unrealized capital gain.

(3) A listed company whose average closing market price of share, in any of the preceding six month has remained below par value or whose breakup value per share as per the latest audited or reviewed financial statements is below par value may issue right shares at par provided that:

- (i) the directors and sponsors shall provide an undertaking to the Commission that they will subscribe the right shares to be offered to them;
- (ii) remaining balance of right issue shall be underwritten by underwriter(s), not being associated company or associated undertaking; and
- (iii) the directors and sponsors of listed company shall deposit the amount of their subscription before the book closure date.

(4) Subject to compliance with the requirements of section 82 of the Act, a listed company may issue right shares at discount provided that –

- (i) the directors and sponsors shall provide an undertaking to the Commission that they will subscribe the portion of right shares offered to them at volume weighted average daily closing price of shares for ninety days prior to the announcement of discount issue;
- (ii) remaining balance of such right issue shall be underwritten by underwriter, not being associated company or associated undertaking; and
- (iii) the directors and sponsors of listed company shall deposit the amount of their subscription before the book closure date.

(5) The book closure shall be made within thirty days from the date of the resolution by the board or within extended time period as approved by the Commission, where required.

(6) For listed companies, the book closure shall be made within thirty days from the date of announcement of right and letter of offer of right shall be dispatched or credited within the time period as specified by the listings regulations of the securities exchange.

(7) Where the shares of a company are traded on futures counter of securities exchange, the book closure shall be made in accordance with the dates specified under listing regulations and the same shall be communicated to the securities exchange and the Commission.

(8) The payment and renunciation dates once announced for the letter of offer of right shall not be extended.

(9) Right issue once announced by board of a listed company shall not be varied, postponed, withdrawn or cancelled by the company.

(10) Where a listed company fails to complete right issue in the manner and within the time specified under these regulations, the company, without prejudice to the provisions of regulations 20 of these regulations, shall-

- (i) publish reasons for delay in completing right issue in at least two daily newspapers of which one shall be in Urdu and one in English language having nation-wide circulation, in its Board of Directors' report to members and on its website; and
- (ii) seek permission of the Commission for extension in time, not exceeding 60 days, for completing right issue;

Provided that, the Commission, based on circumstances of the case, may accept or reject the request of the Company for extension in time.

Provided further that without prejudice to anything contained in clause (ii) above, Commission may proceed against Board of Directors for contravention of the provisions of this regulation.

(11) The company shall comply with all other conditions, reporting and disclosure requirements as provided under these regulations.

CHAPTER III

BONUS ISSUE

4. Conditions for bonus issue.- (1) A company, in accordance with the provisions of articles of association of the company, may issue bonus shares subject to the following conditions, namely:-

- (i) board shall approve the decision to issue bonus shares;
- (ii) the resolution of board to issue bonus shares shall be communicated to the Commission on the same day and in case of listed company, the decision shall also be communicated to the securities exchange on the same day;
- (iii) a company can issue bonus shares either out of share premium account under section 81 of the Act or out of free reserves;

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(2) The decision to issue bonus shares, once announced by the board, cannot be withdrawn.

1 Regulation 4, in sub-regulation (1), clauses (iv), (v) and (vi) omitted through S.R.O 573(I)/2019 dated May 23, 2019:

“(iv) a listed company making bonus issue out of free reserves, calculated in the manner as specified under regulation 3, shall retain at least fifteen per cent of the enhanced paid up capital as free reserves; and

(v) a certificate shall be obtained by the listed company from the auditor certifying that-

a) the free reserves retained after the issue of bonus shares are not less than fifteen per cent of the increased paid up capital of the company; and

b) all contingent liabilities have been deducted while calculating the minimum residual reserve of fifteen per cent.

(vi) the auditor’s certificate as provided in clause (v), shall be sent to the Commission for information and to the securities exchange on the day of decision by board for the public dissemination.”

CHAPTER IV

ISSUE OF SHARES OTHER THAN RIGHT

5. Conditions for issue of shares other than right.- (1) A public company may issue further shares, other than right, under clause (b) of sub-section (1) of section 83 of the Act subject to the following general conditions, namely. –

- (i) the board shall consider and resolve to issue shares other than right;
- (ii) the aforesaid decision of the board shall clearly state the following-
 - (a) quantum of the issue i.e. number of shares and percentage of existing paid up capital;
 - (b) issue price and justification for such price;
 - (c) shares are being issued against consideration in cash or other than cash;
 - (d) person to whom such shares are proposed to be issued;
 - (e) purpose and justification of issue of such shares other than right;
 - (f) benefits to the company and members;
 - (g) declaration by board that the (proposed) shares other than right shall be only be issued after obtaining approval of members, approval of the Commission and complying with all relevant legal requirements.

(2) The aforesaid decision of board of listed company to increase its capital shall be communicated to the Commission and securities exchange on the same day of the decision.

(3) The company shall seek approval of shareholders for issuance of shares, other than right, through special resolution in the general meeting.

(4) The company shall seek approval of the Commission for issuance of shares, other than right, complying with all the relevant requirements under the Act and these regulations.

(5) The company shall comply with all other conditions, reporting and disclosure requirements as provided under these regulations.

6. Notice and minutes of general meeting.- (1) The notice of general meeting, seeking approval for issuance of shares other than right, shall be sent to the members as per requirements of section 132 or 133 of the Act, as applicable, read with section 134 of the Act including,-

- (i) copy of a special resolution under clause (b) of sub-section (1) of section 83 of the Act;
- (ii) quantum of the issue i.e. total number of shares to be issued and percentage of existing paid up capital;
- (iii) issue price and justification thereof; and
- (iv) shares are being issued against consideration in cash or other than cash.

(2) The statement of business transacted along with the notice of general meeting under sub-section (1) of section 134 of the Act, at the minimum, provide the following information,-

- (i) statement that Board proposes that subject other than right shares shall be issued as per the details provided in the notice of the general meeting;
- (ii) name and brief profile of the person, organization and/or company, as the case may be, to whom such shares are proposed to be issued;
- (iii) purpose and justification of issue of shares other than right;
- (iv) justification as to why proposed shares are to be issued other than right and not as rights shares;
- (v) justification for price at which the proposed shares will be issued along with the break up value per shares. Listed companies shall provide details of the average market price during last three months and six months preceding the board announcement as well as the latest available market price.
- (vi) if proposed shares are to be issued for consideration other than cash, detail of non-cash asset (s), service, intellectual property and that value of the same have been determined by a valuer;

- (vii) utilization of the proceeds of the issue (in numeric terms under suitable heads) and benefits to the company and its shareholders with necessary details;
- (viii) existing shareholding of the person, organization, and/or company, as the case may be, to whom the proposed shares will be issued (in number as well as percentage *vis-à-vis* to existing paid up capital of the company);
- (ix) total shareholding of the person, organization and/or company, as the case may be, after the proposed issue of shares (in number as well as percentage *vis-à-vis* to increased paid up capital of the company);
- (x) whether the person, organization or company, as the case may be, to whom the said shares are being issued have provided written consent to the company;
- (xi) stating that these shares shall rank *pari passu* in all respects with the existing shares of the company and details if there is any change;
- (xii) stating that this issue of shares is subject to approval of the Commission;
- (xiii) any other material facts or information pertaining to proposed issue of shares.

(3) The public company shall provide necessary details to the members regarding the proposed issue in general meeting and record the minutes in accordance with the requirements of section 151 of the Act.

7. Application to the Commission for issue of shares other than right.- (1) An application under section 83 of the Act, seeking approval of the Commission for issuance of shares other than right, shall be submitted to the Commission not later than two months from the decision of board to issue such shares.

- (2) The application to the Commission shall be made providing the following information,-
- (i) the application must narrate in detail the specific purpose for which the proceeds of the issue will be utilized;
 - (ii) the application must be signed by the officer or director of the company who has been authorized by shareholders to accomplish the transaction;
 - (iii) financial projections, if applicable, for next three years reflecting implementation of the purpose or plan and its benefits;

- (iv) where the Memorandum and Articles of Association of the Company have been amended, certified copy of the same shall be provided;
- (v) certified copy of relevant forms regarding special resolution and increase in authorized capital, as applicable;
- (vi) relevant details regarding compliance with all the conditions under regulation 5 and regulation 6 along-with supporting information;
- (vii) justification as to why shares are proposed to be issued other than right;
- (viii) all relevant details of the person, organization or company, as the case may be, to whom shares are being issued and relationship of such person, organization or company, as the case may be, with the company;
- (ix) relevant detail of the shares issued within past three years by way of right, bonus, other than right or employee stock option, if any;
- (x) minutes of the meeting of board of directors along with attendance sheet wherein the decision for issuance of further shares other than right was made;
- (xi) minutes of general meeting along with attendance sheet of members, who attended the general meeting, either in person or through proxies;
- (xii) where shares are proposed to be issued against conversion of loan, information or documents shall be provided, separately, regarding loan from each person, organization or company, as the case may be, as per the following -
 - (a) details as to the principal amount of loan and markup (if any);
 - (b) evidence of receipt of loan i.e. copies of cheques and relevant bank statements of the company;
 - (c) schedule of utilization, in numeric terms, under appropriate heading along with evidence of utilization (if already utilized);
 - (d) Certificate from statutory auditor stating that the subject loan / funds have been received and utilized for purpose of the Company;
 - (e) relevant extract of financial statements reflecting the receipt of loan (if any);
 - (f) copy of agreement highlighting terms and conditions for receipt of loan (if any);
 - (g) relevant minutes of meeting approving decision to obtain loan/ funds (if applicable);

- (xiii) where shares are proposed to be issued for consideration other than cash, the value of non-cash asset, service, intellectual property shall be determined by a valuer and for issue of shares against intangible assets, the issuing company shall comply with the requirements of applicable International Financial Reporting Standards:

Provided that the valuation shall not be older than six months from the date of submission of the application;

Provided further that in case of difference in valuation carried out by the two different valuers, the valuation whichever is lower shall be taken into consideration.

- (xiv) evidence of submission of application processing fee under Seventh Schedule to the Act; and
- (xv) any other information, deemed relevant and material shall be disclosed to the Commission.

(3) The Commission may approve the application made under sub-regulation (1), with or without imposing any condition as it deem appropriate.

CHAPTER V
CLASSES AND KINDS OF SHARE CAPITAL

8. Classes and kinds of share capital.- (1) A company may have more than one kind of share capital and may have different classes of shares under each kind having different rights and privileges (“collectively referred in these regulations as shares with differential rights”) as provided under the articles of association of the company.

(2) The offer of further share capital with differential rights shall be made in accordance with the requirements of Section 83 of the Act.

9. Conditions for issuance of shares with differential rights.- A company may issue shares with differential rights under section 58 of the Act subject to compliance with the following conditions, namely-

- (i) the memorandum and articles of association of the company expressly provides and authorizes the issue of different kinds and classes of share capital having differential rights and privileges;
- (ii) preference shares shall not be issued at price below par value i.e. at a discount;
- (iii) board shall consider and resolve to issue shares with differential rights;
- (iv) the aforesaid decision of board shall, in addition to particulars required under (a) to (f) of regulation 3, state the following-
 - (a) description of different kind of shares such as ordinary shares and preference shares or any other kind as may be notified by the Commission;
 - (b) description of differential rights such as different class in each kind, rights or privileges attached to each class or kind of capital;
 - (c) shares are being issued as right or other than right;
 - (d) the entitled right of holders of such shares to participate in profits or surplus funds;
 - (e) the entitled right of holders of such shares to participate in surplus assets and profits on winding-up which may remain after the ordinary shareholders has been repaid;

- (f) whether payment of dividend on preference shares is cumulative or non-cumulative basis;
 - (g) whether the preference shares are convertible into ordinary shares, mode and manner of such conversion;
 - (h) entitled rights of holders of preference shares regarding dividend and voting before and after conversion of preference shares into ordinary shares;
 - (i) if the preference shares are partially or wholly redeemable, mode and manner of redemption;
 - (j) any other condition as deem appropriate by the Commission.
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- (v) the issue of shares is authorized by a special resolution passed at the general meeting of the shareholders;
 - (vi) the shares with differential rights of a listed company shall not exceed twenty-five per cent of the total post-issue paid up share capital including shares with differential kinds/ rights issued at any point of time;
 - (vii) the company having consistent track record of distributable profits for the last three years;
 - (viii) the company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares;
 - (ix) the company has not defaulted in the payment of a declared dividend to its members or on payment of the dividend on previously issued preference shares;
 - (x) the company has not defaulted on conversion or redemption, as the case may be, of its preference shares or debentures that have become due or on payment of interest on such debentures;
 - (xi) the company shall seek approval of the Commission for issuance of such shares;
 - (xii) a company intending to list its preference shares on a securities exchange shall issue such shares in accordance with the listing regulations and ancillary requirements of securities exchange;
 - (xiii) where a company issues ordinary shares with differential rights or preference shares, the company shall not subsequently vary the respective rights, privileges

or class of such share capital unless approval of Commission is obtained and the company shall comply with the relevant requirements under these regulations.

10. Notice and minutes of general meeting for issue of shares with differential rights.-

(1) The notice of general meeting of the company for issuance of shares with differential rights shall be sent to the members as per the requirements of section 132 or 133 of the Act, as applicable, read with section 134 of the Act and shall provide following information-

- (i) identify the kind, class and differential right being considered for approval of the members that include, but are not limited to one or more of the following:
 - (a) differential rights or class as ordinary shares or preference shares;
 - (b) nature of such shares i.e. cumulative or non-cumulative, participating or non-participating, convertible or non-convertible, redeemable or non-redeemable
 - (c) different voting rights, voting rights disproportionate to the paid up value of shares held, voting rights for specific purposes only or no voting rights at all;
 - (d) different rights for entitlement of dividend, right shares or bonus shares or entitlement to receive the notices and to attend the general meetings;
 - (e) rights and privileges for indefinite period, for a limited specified period or for such periods as may from time to time be determined by the members through special resolution.
- (ii) declaration that proposed resolution is a special resolution;
- (iii) providing particulars required under sub-regulation (1) of regulation 6 of these regulations, as applicable.

(2) The statement of material facts annexed to the notice of the general meeting in pursuance of section 134 of the Act shall contain the following particulars, namely:—

- (i) where proposed issue of shares is by way of other than right, relevant information along-with supporting evidence under sub-regulation (2) of regulation 6, as applicable;
- (ii) where proposed issue of shares is by way of right shares, requirements under regulation 3 shall be complied and the company shall provide features of right

shares as required under sub-clause (a) to (f) of clause (iv) to sub-regulation (1) of regulation 3.

- (iii) the total number of shares to be issued with differential rights;
- (iv) the details of the differential rights as ordinary shares or preference shares, as applicable;
- (v) nature of such shares i.e. cumulative or non-cumulative, participating or non-participating, convertible or non-convertible, redeemable or non-redeemable;
- (vi) the percentage of the proposed shares with differential rights to the total post issue paid up share capital;
- (vii) the reasons or justification for the issue;
- (viii) the price at which such shares are proposed to be issued either at par or at premium;
- (ix) the basis on which the price has been arrived at;
- (x) in case of preference issues-
 - (a) details of total number of shares proposed to be allotted to sponsors /directors;
 - (b) details of total number of shares proposed to be allotted to persons other than sponsors and directors and their relationship, if any, with sponsors/directors.
- (xi) the percentage/proportion of voting rights of shares with differential voting right shall carry to the total voting right of the aggregate share capital;
- (xii) the right of holders of such shares to participate in profits or surplus funds;
- (xiii) the right of holders of such shares to participate in surplus assets and profits on winding-up;
- (xiv) the payment of dividend on cumulative or non-cumulative basis to holders of preference shares;
- (xv) manner, mode, terms and conditions for conversion of preference shares into ordinary shares. (*Further details if conversion is contingent on some event, is at the option of the holder or company*);
- (xvi) expected dilution in equity share capital upon conversion of preference shares;
- (xvii) entitled rights of holders of preference shares before and after conversion of preference shares into ordinary shares;

- (xviii) manner, mode, terms and conditions for whole or partial redemption of preference shares. (*Further details if redemption is contingent on some event, is at the option of the holder or company*);
- (xix) the change in control, if any, in the company that may occur consequent to the issue of shares with differential voting rights;
- (xx) shareholding pre and post issue of shares with differential voting rights;
- (xxi) remedy available to holders of preference shares in case of failure of company to redeem or convert or share profit or impart any rights thereof being contrary to the terms of conditions of the proposed issue or disclosures made by company;
- (xxii) mechanism on resolving disputes with members regarding any feature of preference shares or shares with differential rights;
- (xxiii) any other information considered important and material regarding the proposed issue.

(3) The company shall provide necessary details to the members regarding the proposed issue in general meeting and record the minutes in accordance with the requirements of section 151 of the Act.

11. Application to the Commission for issue of shares with differential rights.- (1) An application, seeking approval of the Commission for issuance of shares with differential rights, as ordinary shares or preference shares, shall be submitted to the Commission not later than two months from the decision of board to issue such shares.

(2) The application under sub-regulation (1), shall provide the following information:

- (i) relevant details of the conditions, as applicable under regulation 9, duly complied by the company;
- (ii) all relevant information and disclosures along with supporting evidence, as stated under regulation 10;
- (iii) if shares are being issued by way of right issue, all relevant information and disclosures along with supporting evidence regarding compliance with requirements of regulation 3, as applicable, shall be provided;

- (iv) if shares are being issued as other than right, all relevant information and disclosures along with supporting evidence regarding compliance with requirements of regulation 7, as applicable, shall be provided;
- (v) complete details of the mechanism of conversion, redemption, voting rights and dividend payment or accumulation of preference shares as required under regulation 9 shall be provided;
- (vi) mechanism in place by the company for addressing conflict between the company and members or difference in interpretation of terms of variation or differential rights;
- (vii) remedy available to holders of shares with differential rights or preference shares, in case the company fails to timely honor its commitments, as disclosed in the term sheet for such issue.
- (viii) declaration that all material information have been provided to the shareholders and Commission and that none of the disclosures or ancillary information are inaccurate or misleading.

12. Failure to convert or redeem preference shares: (1) A listed company that fails to, completely or partially, fulfill or comply with any of the relevant terms and conditions of preference shares shall be considered as an event of default.

Explanation:- for the purposes of this regulation, the expression “default” includes failure to convert or failure to redeem principal along with interest accrued, as applicable, on the pre-agreed date and shall set to occur at the first instance of such delay or failure to convert or redeem, as applicable.

(2) The company shall seek approval of the preference shareholders and the Commission to reschedule, amend, alter, vary or reassess the terms and conditions of such issue within six month of default of such issue.

(3) If the company continues to default after the time given under sub-regulation (2), without prejudice to provisions of regulation 20 of these regulations, the Commission may:

- (i) direct such company to redeem the entire issue with immediate effect and make full compensation along with interest accrued therein, if any, ; or
- (ii) direct such company to convert the entire issue into ordinary shares with immediate effect; or
- (iii) give direction on any other action as may be specified in the manner deemed appropriate by the Commission from time to time.

(4) Where the Commission or any authorized officer of the Commission is of the opinion, keeping in view of the facts and circumstances of the case, that the listed company has obtained approval referred to in sub-regulation (2), by submitting false or incorrect information or documents to the Commission in order to defraud the Commission or its shareholders, the Commission may take any appropriate civil or criminal action in accordance with provisions of the Act.

CHAPTER VI

EMPLOYEE STOCK OPTION SCHEME

13. Condition for issue of Employee Stock Option Scheme.- (1) A public company, may reserve certain percentage of further issue for its employees as Employees Stock Option Scheme under proviso to clause (a) of sub-section (1) of section 83 of the Act, subject to the following conditions-

- (i) the articles of association of the company expressly provides and authorizes the issue of scheme;
- (ii) only regular or permanent employees who are on the payroll of a company, its holding company or its subsidiary company or directors of a company excluding non-executive directors, working in and out of Pakistan, shall be eligible to participate in a scheme but does not include the following-
 - (a) an employee who is sponsor of a company; or
 - (b) a director who either himself or through his relatives or through any body corporate, directly or indirectly, holds more than ten per cent of the outstanding equity shares of the company;
- (iii) the company is in operations for the last three years;
- (iv) the company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to offer scheme;
- (v) the company has not defaulted in the payment of a declared dividend to its members or preference shareholders or in conversion or redemption of its preference shares or debentures that have become due or on payment of interest on such debentures;
- (vi) the company has not defaulted in payment of any dues of employee to any authority or has not failed to honor its commitments under any previously issued scheme;
- (vii) the board shall form a compensation committee, comprising of at least two directors not being executive directors, for administration and superintendence of the scheme

provided that the chairman of the compensation committee of listed company shall be an independent director;

- (viii) board shall consider and resolve to issue the scheme;
- (ix) the aforesaid decision of board shall provide information required under sub-clause (a) to (g) of clause (ii) of sub-regulation (1) of regulation 5, as applicable;
- (x) the offer of scheme is authorized by a special resolution passed by members at a general meeting;

Provided that special resolution shall be passed at the general meeting, separately, for the following scheme,-

- (a) grant of option to employees of a subsidiary or holding company; and
 - (b) grant of option to identified employees, during any one year, equal to or exceeding one per cent of the issued capital (excluding outstanding conversions) of the company at the time of grant of option;
- (xi) in case shares are to be issued at discount to the par value, the company shall also obtain approval of shareholders and the Commission under section 82 of the Act;
 - (xii) the company and compensation committee shall ensure that its executive directors and employees in senior management shall not participate in the deliberation or discussion of their own allocation of options under the scheme;
 - (xiii) the company shall seek approval of the Commission for issuance of such shares;
 - (xiv) the company shall ensure compliance with applicable International Financial Reporting Standards;
 - (xv) a company shall not vary the terms of a scheme in any manner which may be detrimental to the interests of its employees;

Provided that a company may by special resolution in a general meeting vary the terms of a scheme offered pursuant to an earlier resolution but not yet exercised by its employees provided that such variation is not prejudicial to the interests of the option holders. The provisions of regulation 13 shall apply to such variation of terms as they do to the original grant of option.

(2) The terms of reference of Compensation Committee shall, among others, include framing the detailed terms and conditions of a Scheme including the following, namely:

- (i) ensure that the contents of the scheme are in line with the provisions of these regulations and overall financial conditions of the company;
- (ii) the scheme is not only in the interest of the employees but also of its members;
- (iii) options to be granted to employees are in line with the overall compensation policy of the company and no undue favor or injustice is done with any employee;
- (iv) quantum of option to be granted under a Scheme to each employee and in aggregate;
- (v) specifying conditions under which option vested in an employee may lapse or in case of termination of employment for misconduct;
- (vi) exercise period within which an employee should exercise option and that option shall lapse on failure to exercise the same within the exercise period;
- (vii) specify time period within which an employee shall exercise vested options in the event of termination from service or resignation, as applicable;
- (viii) right of an employee to exercise all options vested in him at one time or at various points of time within an exercise period;
- (ix) procedure for making a fair and reasonable adjustment to the number of options and to an exercise price in case of rights issues, bonus issues and other corporate actions;
- (x) grant, vesting and exercise of option in case of an employee who is on long leave;
- (xi) procedure for cashless exercise of options:
Provided that requirements of the Act prohibiting financial assistance to any person for the purposes of purchase of shares is not violated by the companies that opt for the cashless exercise of options;
- (xii) mechanism for recovery of options erroneously granted to an employee;
- (xiii) appropriate corporate education processes are in place to explain the inherent risks and rewards of share ownership and the operational details of the Scheme;
- (xiv) mechanism for the eligible employees to seek independent advice regarding the scheme;

- (xv) mechanism for resolving conflicts/ dispute regarding implementation of scheme;
and
- (xvi) all relevant and material features, risk and benefits of the scheme are clearly specified and disclosed in the scheme.

(3) The companies granting option to its employees pursuant to the Scheme will have the freedom to determine the exercise price.

(4) For setting the exercise price, base price shall be determined i.e. in case of a listed company, the base price must be based on minimum ninety days weighted average market price and in case of an unlisted company, the base price may be based on breakup value per share, earning per share, return on equity, return on assets etc. or any combination.

(5) The exercise price may be the base price or at a certain discount to or at a certain premium to the base price.

(6) The exercise price may be adjustable and the adjustment procedures must be explained through illustrations on separate sheets attached to the scheme.

(7) There shall be a minimum period of one year between the grant of option and vesting of option.

(8) Where options are granted by a company under its scheme in lieu of options held by the same person under a scheme in another company, which has merged or amalgamated with the first mentioned company, the period during which the options granted by the merging or amalgamating company were held by him shall be adjusted against the minimum vesting period required under this regulations.

(9) A company shall have the freedom to specify the lock-in period for the shares issued pursuant to an exercise of option.

(10) An employee shall not have right to receive any dividend or to vote or be entitled to rights of members in respect of option granted to him, till shares are issued to such employee on exercise of option.

(11) In case of failure to exercise the option, the right granted shall lapse and the amount, if any, payable by the employees, at the time of grant of option-

- (i) may be forfeited by the company if the option is not exercised by the employees within the exercise period; or
- (ii) may be refunded to the employees if the options are not vested due to non-fulfilment of conditions relating to vesting of option as per the Scheme.

(12) An option granted to an employee shall not be transferable to any other person except to an entitled employee of a company:

Provided that:

- (i) in the event of death of an employee while in employment of a company, all options granted to him till the date of his death shall vest in his legal heirs or nominees;
- (ii) in case an employee suffers a permanent incapacity while in employment of a company, all options granted to him, as on the date of permanent incapacitation, shall vest in him on that day;
- (iii) in the event of resignation or termination of service of an employee, all options not vested as on that day shall expire. Provided, the employee shall, subject to the terms and conditions of a Scheme formulated, may be entitled to retain all the vested options.

(13) An option granted to an employee shall not be pledged, hypothecated, mortgaged or otherwise alienated in any other manner.

14. Notice and minutes of general meeting for Scheme.- (1) The notice of general meeting of the company for employee stock option scheme shall be sent to the members as per the requirements of section 132 or 133 of the Act, as applicable, read with section 134 of the Act and shall provide, at the minimum, following information:

- (i) proposed resolution for employee stock option scheme is a special resolution under Section 83 of the Act;
- (ii) identification of classes of employees entitled to participate in the scheme;
- (iii) the maximum number of shares that can be issued pursuant to the scheme must be determined and disclosed in the scheme. This number may be fixed or in the form of percentage of the total paid up capital of the company.

(2) The statement of material facts annexed to the notice of the general meeting in pursuance of section 134 of the Act shall contain the following particulars, namely-

- (i) the total number of stock options to be granted;
- (ii) identification of classes of employees entitled to participate in the scheme;
- (iii) the appraisal process for determining the eligibility of employees to the scheme;
- (iv) the requirements of vesting and period of vesting;
- (v) the maximum period within which the options shall be vested;
- (vi) the exercise price or the formula for arriving at the same;
- (vii) the exercise period and process of exercise;
- (viii) the lock-in period, if any;
- (ix) the maximum number of options to be granted per employee and in aggregate;
- (x) the method for valuation of its options;
- (xi) conditions under which options vested in employee may lapse;
- (xii) statement that the company shall comply with all the requirements of the Act, these regulations and applicable financial reporting standards;
- (xiii) in case of variation of terms of Scheme, the company shall disclose nature of the variation, rationale for such variation and the details of the employees who are beneficiaries of such variation;
- (xiv) any other information considered important and material regarding the proposed issue.

(3) The company shall provide necessary details to the members regarding the proposed issue in general meeting and record the minutes in accordance with the requirements of section 151 of the Act.

15. Application to the Commission for offer of scheme.- (1) An application, seeking approval of the Commission for offer of employee stock option scheme, shall be submitted to the Commission not later than two months from the decision of board to issue such shares.

(2) The application under sub-section (2), shall include the following information:

- (i) relevant details of the conditions, as applicable under regulation 13, duly complied by the company;
- (ii) all relevant information and disclosures along with supporting evidence, as stated under regulation 14;
- (iii) all relevant information and disclosures along with supporting evidence regarding compliance with requirements of regulation (7), as applicable, shall be provided;
- (iv) an undertaking by compensation committee that the scheme has been structured in a way that it is fully aligned with the business plan of the company;
- (v) statement that the company has taken all appropriate measure to ensure that its executive directors and employees in senior management shall not participate in the deliberation or discussion of their own allocation of options under the Scheme;
- (vi) declaration that all material information have been provided to the shareholders and Commission and that none of the disclosures or ancillary information are inaccurate or misleading.

16. Scheme offered at time of public offering.- Except regulation 13 of these regulations, nothing in these regulations shall apply in case shares are issued to employees at the time of public offering through the prospectus of a company:

Provided that if any option is outstanding at the time of an initial public offering by a company, the sponsors' contribution shall be calculated with reference to the enlarged capital which would arise on exercise of all vested options.

CHAPTER VII

GENERAL CONDITIONS, REPORTING AND DISCLOSURE REQUIREMENTS

17. General conditions.- (1) The board shall not decide or recommend increase in capital by way of further issue of shares, beyond the authorized capital as stipulated in the memorandum and articles of association of the company or where resolution to give effect of such increase is passed by the members.

(2) The Company seeking approval for further issue of shares from the Commission is responsible to submit fee relevant to such application and submit evidence thereof along-with the application.

(3) The Commission reserves the right to approve or reject an application, in any form, under these regulations.

(4) In addition to the information, disclosures and conditions specified under these regulations, Commission may seek further information, require further disclosure or impose further conditions as deemed appropriate.

(5) In case share capital of a company has different classes or kinds having different rights and privileges, the fact shall be distinctly mentioned in the letter of offer in case of right issue and the difference in the rights and privileges of any class of share capital shall be conspicuously mentioned in directors' report to members.

18. Reporting.- (1) The Company within 30 days from the date of issue of shares submit a report to the Commission clearly indicating the shares issued to or taken up by:

- (i) directors;
- (ii) associated companies;
- (iii) other shareholders;
- (iv) underwriters; and
- (v) persons to whom unsubscribed shares are issued under sub-clause (iv) of clause (a) of sub-section (1) of section 83 of the Act.

(2) After issuance of right shares, the listed entity shall submit to the Commission the following statement(s) on quarterly basis regarding rights issue-

- (i) indicating category wise utilization (capital expenditure, sales and marketing, working capital etc.) between projected utilization of funds made in right announcement or statement of material facts, as applicable and the actual utilization of funds;
- (ii) deviation, if any, from the purpose or use of proceeds stated in right announcement or statement of material facts along-with justification for such deviation:

Provided, that the statement(s) specified under clause (i) above, shall be given till such time the proceeds from the right issue have been fully utilized or the purpose for which these proceeds were raised has been achieved.

(3) The Company, after approval of scheme, shall report the following to the Commission:

- (i) A report, on annual basis, on offer of the Scheme which must contain at least the following information:
 - (a) total entitlement pool;
 - (b) number of options granted;
 - (c) number of options vested;
 - (d) number of options exercised;
 - (e) number of options lapsed;
 - (f) number of shares issued pursuant to the exercise of options granted;
 - (g) exercise price;
 - (h) exercise period;
 - (i) the amount of tax withheld during the year;
 - (j) variation in the terms of the Scheme, if any;
 - (k) adjustment in the entitlement pool, if any;
 - (l) adjustment in the exercise price, if any;
 - (m) number of options granted to employees in the management cadre and number of such employees;

- (n) number of options granted to employees in other than the management cadre and number of such employees; and
 - (o) number of employees who are granted options, during the year, equal to or exceeding one per cent of the issued capital of the company.
- (ii) copy of the auditors' certificate that the scheme has been implemented in accordance with these regulations and the resolution of the company passed in a general meeting;

(4) The board of directors shall, at each annual general meeting, place before the shareholders the auditor certificate specified under clause (ii) to sub-regulation (3) of regulation 18 above.

19. Disclosures.- (1) All disclosures and information required under the regulations shall be clear, concise, accurate and not misleading provided, wherever possible, information shall be provided in numeric terms under appropriate headings.

(2) The listed company shall furnish an explanation for any deviation from purpose of right issue, specified in sub-regulation (2) of regulation 18, in the directors' report to the members.

(3) Following information shall be conspicuously disclosed in Directors' report to the members in the financial year in which the issue of shares was completed:

- (i) in case of right issue: Details of such issue (inclusive of quantum and price), purpose of issue, utilization of proceeds (planned and actual, as applicable) and status of completion of plans and objectives of issue;
- (ii) in case of shares other than right: Details of such issue (inclusive of quantum and price), purpose of issue, party to whom shares were issued, utilization of proceeds (if any);
- (iii) in case of issuance of shares with differential right, details to the extent applicable regarding the following-
 - (a) the total number of shares allotted with differential rights;

- (b) the details of the right of holders of such shares relating to voting and dividends;
 - (c) percentage of the shares with differential rights to the total post issue equity share capital;
 - (d) the price at which such shares have been issued;
 - (e) if such shares were issued as right shares or other than right;
 - (f) change in control, if any, in the company consequent to the issue of shares with differential voting rights.
- (iv) In case of employee stock option scheme, details of such scheme including:
- (a) options granted;
 - (b) pricing formula;
 - (c) options vested;
 - (d) options exercised;
 - (e) total number of shares arising as a result of exercise of option;
 - (f) options lapsed;
 - (g) variation of terms of options;
 - (h) proceeds received against exercise of options;
 - (i) employee-wise details of options granted to:
 - (I) any employee who receives a grant in any one year of option amounting to five per cent or more of option granted during that year; and
 - (II) identified employees who were granted option, during any one year, equal to or exceeding one per cent of the issued capital (excluding outstanding conversions) of a company at the time of grant.
- (vi) If any options granted to employees in pursuance of a Scheme are outstanding at the time of initial public offering, the offering document of a company shall disclose relevant information specified under clause (iv) of sub-regulation (3) above.

CHAPTER VIII
MISCELLANEOUS

20. 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 subsection (2) of section 512 of the Act.

21. Relaxation from the requirement of Regulation: Where the Commission is satisfied that it is not practicable to comply with any of the requirements of Regulation 3 to Regulation 19 of these Regulations, it may, for reasons to be recorded, based on the application of the company along with prescribed fee, relax the same subject to such conditions as it may deem fit.

22. Repeal and Savings.- (1) The following instruments, herein after referred to as repealed instruments, shall stand repealed-

- (i) Companies (Issue of Capital) Rules, 1996;
- (ii) Companies' Share Capital (Variation in Rights and Privileges) Rules, 2000
- (i) Public Companies (Employees Stock Option Scheme) Rules, 2001;
- (ii) Guidelines for the Structuring and Offering of the Employees Stock Option Schemes, 2016;
- (iii) Circular 30 of 2016 dated September 16, 2016:

Provided that repeal of the repealed instrument shall not-

- (a) revive anything not in force at the time at which the repeal take effect; or
- (b) affect the previous operation of the repealed instruments or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under or in respect of the said repealed instruments; or

- (d) affect any penalty imposed, forfeiture made or punishment incurred in respect of any offence committed against or in violation of the repealed instrument; or
- (e) affect any inspection, investigation, prosecution, legal proceeding or remedy in respect of any obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such inspection, investigation, prosecution, legal proceedings or remedy may be made, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if these regulations has not been notified.

(2) Save as otherwise specifically provided, nothing in these regulations shall affect or deemed to effect any action taken, orders issued, relaxation granted unless withdrawn, fee paid or accrued, resolution passed, direction given under the repealed instruments shall, if in force at the effective date of these regulations and not inconsistent with provision of these regulations, shall continue to be in force and have effect as if it were respectively taken, made, directed, passed, given, executed or issued under these regulations.

Schedule I to the Companies (further issue of shares) Regulations, 2018

Following information shall be sent to the members along with the letter of offer for right issue by a listed company:

- (A) Information pertaining to company offering right issue:
 - (a) Company profile and history
 - (i) Name of Company
 - (ii) Incorporation date
 - (iii) Date of commencement of business
 - (iv) Corporate Universal Identification Number (CUIN)
 - (v) Website address and web-link where latest available financial statements are placed (in case of listed company)
 - (vi) Contact details for shareholder facilitation (in form of postal address, phone number or email address)
 - (b) profile of management and sponsors
 - (i) Profile of directors (names, executive/ nonexecutive/ independent/nominee director and tenure of directorship held)
 - (ii) other directorships held (provide names of the company)
 - (c) name(s) of the auditor(s)
 - (d) existing capital indicating classes of shares, if any, separately
 - (i) authorized Capital amounting to Rs. _____ divided in to _____ shares of Rs. _____ each.
 - (ii) paid-up capital amounting to Rs. _____ divided in to _____ shares of Rs. _____ each.
 - (e) name of holding company, if any

- (e) date of meeting of board of directors (BOD) announcing right issue
 - (f) names of directors attending the BOD meeting
 - (g) necessity of the issue
 - (i) details of the main objects for raising funds through present right issue:
 - a) detail of project
 - b) total funds required for the project
 - c) percentage of funds required financed through subject right issue
 - d) percentage of funds required financed from other sources, if any
 - e) time of completion of project
 - (ii) expected benefits to accrue from proposed right issue (description and amount)
 - (iii) financial projections for three (3) years (highlights)
 - (h) Average market price during the last six months
 - (i) financial effects arising from right issue
 - (i) increase in paid-up share capital
 - (ii) net asset/breakup value per share before and after right issue
 - (iii) gearing ratio before and after right issue
 - (j) Total expenses to the issue
 - (i) bankers' commission
 - (ii) underwriters commission
 - (iii) others, if any
- (C) Information regarding risk and risk mitigating factors, as applicable:
- (a) description of major risks and company's efforts to mitigate them :
 - (i) risks relating to the project for which right issue is announced

- (ii) risks relating to subscription/under-subscription of right issue
 - (iii) material contingencies
 - (iv) material commitments
 - (v) any adverse issue reported by the auditor in their audit reports in previous five years
- (b) names of underwriters, (if required)
- (D) Eligibility criteria & associated matters:
- (a) eligible members
 - (b) bankers to the issue
 - (c) date upto which the offer, if not accepted, shall be deemed to have been declined
 - (d) mode of acceptance (only through banking channel)
 - (i) bank account number
 - (ii) date by which amount to be credited in bank account to constitute valid acceptance
 - (iii) number and date of pay order / bank draft and other banking instrument.
- (E) Any other material information that may have direct or indirect bearing on the investment decision.

[No. CSD/CI-Reg/14/2018]

Bilal Rasul
(Secretary to the Commission)