

**GOVERNMENT OF PAKISTAN
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN**

Islamabad, 6th December 2017

NOTIFICATION

S. R. O. 1240(I)/2017. – In exercise of powers conferred by section 512 read with clause (b) of sub-section (3) of section 199 of the Companies Act, 2017 (XIX of 2017), and having previously being published vide S.R.O. 1009(I)/2017 dated 5th October, 2017 as required by section 512 of the said Act, the Securities and Exchange Commission of Pakistan hereby makes the following Regulations, namely:-

CHAPTER I

PRELIMINARY

1. Short title, commencement and application. – (1) These Regulations shall be called the Companies (Investment in Associated Companies or Associated Undertakings) Regulations, 2017.

(2) These Regulations shall come into force at once.

(3) These Regulations shall apply to all companies except and to the extent those specifically exempted by the Commission through notification under clause (a) of sub-section (3) of section 199 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) “associated companies” and “associated undertakings” shall have the same meaning assigned to it in clause (4) of sub-section (1) of section 2 of the Act;

(c) “equity investment” includes investment in the shares of a company; and

(d) “investment” shall have the same meaning as provided in the explanation to sub-section (1) of section 199.

(2) Words and expressions used but not defined in these regulations shall, unless there is anything repugnant in the subject or context, have the same meanings assigned to them in the Act, the Securities Act, 2015 or the Securities and Exchange Commission of Pakistan Act, 1997.

CHAPTER II

NOTICE OF MEETING AND INFORMATION TO MEMBERS

3. Information to be disclosed to members.– (1) The company shall disclose following information in the statement annexed to the notice, pursuant to sub-section (3) of section 134 of the Act, of a general meeting called for considering investment decision under section 199 of the Act-

- (a) Disclosures for all types of investments,-
 - (A) Regarding associated company or associated undertaking:-
 - (i) name of associated company or associated undertaking;
 - (ii) basis of relationship;
 - (iii) earnings per share for the last three years;
 - (iv) break-up value per share, based on latest audited financial statements;
 - (v) financial position, including main items of statement of financial position and profit and loss account on the basis of its latest financial statements; and
 - (vi) in case of investment in relation to a project of associated company or associated undertaking that has not commenced operations, following further information, namely,-
 - (I) description of the project and its history since conceptualization;
 - (II) starting date and expected date of completion of work;
 - (III) time by which such project shall become commercially operational;
 - (IV) expected time by which the project shall start paying return on investment; and
 - (V) funds invested or to be invested by the promoters, sponsors, associated company or associated undertaking distinguishing between cash and non-cash amounts;
 - (B) General disclosures:-
 - (i) maximum amount of investment to be made;
 - (ii) purpose, benefits likely to accrue to the investing company and its members from such investment and period of investment;

- (iii) sources of funds to be utilized for investment and where the investment is intended to be made using borrowed funds,-
 - (I) justification for investment through borrowings;
 - (II) detail of collateral, guarantees provided and assets pledged for obtaining such funds; and
 - (III) cost benefit analysis;
 - (iv) salient features of the agreement(s), if any, with associated company or associated undertaking with regards to the proposed investment;
 - (v) direct or indirect interest of directors, sponsors, majority shareholders and their relatives, if any, in the associated company or associated undertaking or the transaction under consideration;
 - (vi) in case any investment in associated company or associated undertaking has already been made, the performance review of such investment including complete information/justification for any impairment or write offs; and
 - (vii) any other important details necessary for the members to understand the transaction;
- (b) In case of equity investment, following disclosures in addition to those provided under clause (a) of sub-regulation (1) of regulation 3 shall be made,-
- (i) maximum price at which securities will be acquired;
 - (ii) in case the purchase price is higher than market value in case of listed securities and fair value in case of unlisted securities, justification thereof;
 - (iii) maximum number of securities to be acquired;
 - (iv) number of securities and percentage thereof held before and after the proposed investment;
 - (v) current and preceding twelve weeks' weighted average market price where investment is proposed to be made in listed securities; and
 - (vi) fair value determined in terms of sub-regulation (1) of regulation 5 for investments in unlisted securities;
- (c) In case of investments in the form of loans, advances and guarantees, following disclosures in addition to those provided under clause (a) of sub-regulation (1) of regulation 3 shall be made,-
- (i) category-wise amount of investment;
 - (ii) average borrowing cost of the investing company, the Karachi Inter Bank Offered Rate (KIBOR) for the relevant period, rate of return for *Shariah* compliant products and

- rate of return for unfunded facilities, as the case may be, for the relevant period;
- (iii) rate of interest, mark up, profit, fees or commission etc. to be charged by investing company;
- (iv) particulars of collateral or security to be obtained in relation to the proposed investment;
- (v) if the investment carries conversion feature i.e. it is convertible into securities, this fact along with terms and conditions including conversion formula, circumstances in which the conversion may take place and the time when the conversion may be exercisable; and
- (vi) repayment schedule and terms and conditions of loans or advances to be given to the associated company or associated undertaking.

(2) A listed company shall simultaneously dispatch a copy of aforesaid notice and the statement of material facts to the head office of the Securities and Exchange Commission of Pakistan, through fax or email and courier service on the same day it is dispatched to the members.

(3) The directors of the investing company while presenting the special resolution for making investment in an associated company or associated undertaking shall certify to the members of the investing company that they have carried out necessary due diligence for the proposed investment before recommending it for members' approval.

(4) The duly signed recommendations of the due diligence report shall be made available to the members for inspection in the general meeting called for approval of the special resolution for investment pursuant to section 199 of the Act.

4. Other information to be disclosed to the members.- (1) If the associated company or associated undertaking or any of its sponsors or directors is also a member of the investing company, the information about interest of the associated company or associated undertaking and its sponsors and directors in the investing company shall be disclosed in the notice of general meeting called for seeking members' approval pursuant to section 199 of the Act.

(2) In case any decision to make investment under the authority of a resolution passed pursuant to provisions of section 199 of the Act is not fully implemented in line with the approval of members till the holding of subsequent general meeting, the status of the decision shall be explained to the members through a statement having the following details namely,-

- (a) total investment approved;
- (b) amount of investment made to date;
- (c) reasons for deviations from the approved timeline of investment, where investment decision was to be implemented in specified time; and

(d) material change in financial statements of associated company or associated undertaking since date of the resolution passed for approval of investment.

(3) Latest annual audited financial statements of the associated company or associated undertaking along with the latest interim financial statements, if any, shall be made available for inspection of the members in the general meeting called for considering investment decisions in such associated company or associated undertaking pursuant to section 199 of the Act.

CHAPTER III RESTRICTIONS AND CONDITIONS

5. Restrictions and conditions applicable to a company making investment.-

(1) Where investment is being made in unlisted equity securities of an associated company or associated undertaking, the fair value for such securities shall be determined by a person having such qualifications and experience and registered as a valuer in such manner and on such terms and conditions as may be specified by the Commission pursuant to section 460 of the Act.

(2) Where approval is granted by the members for investment in any securities of an associated company or associated undertaking up to a certain limit, such approved limit shall stand exhausted upon the investment reaching that limit on a cumulative basis, whether such investment is made as a whole or on a piecemeal basis and such approval shall not be valid for any recurring investment even after divestment of the securities acquired by it in pursuance of the aforesaid approval.

(3) Share deposit money shall be transferred for equity investment only after announcement of the offer for issue of shares by the associated company or associated undertaking and if shares are not issued within ninety days or within the time prescribed by the relevant legal and regulatory framework, whichever is later, such share deposit money shall be treated as loan, which shall be subject to interest, mark up or return from the date of transfer of funds in accordance with the provisions of section 199 of the Act.

(4) The rate of return on loans, advances and debt securities etc. shall not be less than Karachi Inter Bank Offered Rate (KIBOR) for the relevant period or the borrowing cost of the investing company, whichever is higher:

Provided that where a company opts for *Shariah* compliant mode of financing, the transactions shall be structured in such a way that the rate of return on such facilities is not less than that earned by Islamic Banks or Islamic Financial Institutions in Pakistan on similar facilities during the corresponding time period or the borrowing cost of the investing company, whichever is higher.

(5) In case of unfunded facilities (for example a guarantee, letter of indemnity, etc.) the rate of return to be charged shall be determined based on the rate of interest,

mark up, profit, fees or commission etc., as the case may be, charged by commercial banks or Islamic Banks and Financial Institutions on similar unfunded facilities.

(6) Interest, mark up, profit, fees or commission, as the case may be, shall be recovered periodically by the investing company in line with the terms and conditions approved by the members.

(7) The company shall not extend to an associated company or associated undertaking any loan or advance as running finance, revolving line of credit or any other similar facility for a period beyond one year provided that members may approve renewal of such loan or advance pursuant to section 199 of the Act.

6. Period of validity of investment decision.- Unless otherwise specifically authorised by the members in the general meeting the special resolution authorising investment in an associated company or associated undertaking shall be valid for a period of twelve months and shall stand lapsed after such period.

CHAPTER IV MAINTENANCE OF RECORD

7. Register of investments in associated company or associated undertakings.- (1) In addition to any records maintained by an investing company under the provisions of any law, rules or regulations, such company shall maintain a register in the specified Form annexed to these regulations and shall enter therein the particulars of its investments in associated company or associated undertakings.

(2) The entries in the register shall be made instantly, whenever there is a cause to make entry, in chronological order and shall be authenticated through signatures by the company secretary or by any other person authorised by the board in this behalf.

(3) The register shall be maintained at the registered office of the company under the custody of the company secretary or any other officer authorised by the board in this behalf and shall be preserved permanently.

(4) The provisions applicable to inspection of register under the Act shall apply to the inspection of the register maintained under sub-regulation (1).

8. Penalty.- Any contravention of the regulations shall be punishable with a penalty which may extend to five million rupees and, where the contravention is a continuing one, with a further penalty which may extend to one hundred thousand rupees for every day after the first during which such contravention continues.

9. Repeal.- The Companies (Investment in Associated Companies or Associated Undertakings) Regulations, 2012 notified vide S.R.O. 27(I)/2012, dated January 16, 2012 is hereby repealed.

Form

**Register of Investments in Associated Companies or Associated Undertakings
[Pursuant to Section 199]**

Sr. No.	Name of associated company or associated undertaking	Type of Investment (<i>Equity, Debt Security, Loan, Guarantee etc.</i>)	Major terms and conditions (including rate of mark up, return, commission etc.)	Date of the board resolution for recommending such investment for members' approval	Date of Members' Approval in the general meeting	Amount Approved by members	Period over which investment will be made
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

Date of making investment	Amount Invested	No. of Securities acquired, if applicable	Date of Divestment /Repayment	Amount Divested / Repaid	No. of securities disposed of/redeemed, if applicable	Sale consideration / Redemption amount, for securities	Remaining Amount of investment
(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)

Remaining balance (No. of Securities), if applicable	Remarks (including the details where approval has lapsed being time barred, or any default by the associated company or associated undertaking)
(17)	(18)

[CSD/W-II/RegulationsSec199/112/2017]


 (Bilal Rasul)
 Secretary to the Commission