



SECP

SECURITIES AND EXCHANGE
COMMISSION OF PAKISTAN

CONSULTATION PAPER

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

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Introduction

The Securities and Exchange Commission of Pakistan (the 'Commission') notified amendments to the Listed Companies (Substantial Acquisition of Voting Shares & Takeovers) Regulations, 2017 (the Regulations) in January 2024. The amendments were intended to ensure protection of rights of the minority shareholders of the target company and encourage a conducive environment for takeover transactions through acquisition of shares of listed companies in a fair, transparent and competitive manner. The amendments also enhanced consistency of the subsidiary legislation with the Securities Act, 2015 (the Act) and aimed to align the same with best practices in other jurisdictions.

The core philosophy behind takeover laws is to foster an environment where market practices are fair and transparent. This involves ensuring that all shareholders have access to sufficient information to make informed decisions and no party is unfairly advantaged or disadvantaged in the takeover process. The takeover laws provide clear guidelines and set out necessary steps to reduce uncertainty for both the acquiring and target companies, thus providing minority shareholders timely information for making informed decisions.

1. Objective of the Consultation Paper

Implementation of an efficient takeover regime can promote a stable market environment, fostering investor confidence and supporting long-term economic growth. The Commission has initiated impact analysis to assess efficacy of the takeover laws for listed companies in catering to the rapidly evolving global regulatory landscape governing takeovers. For this purpose, the Commission constituted a senior level committee to review the takeover regime from a regulatory perspective.

This consultation paper is published for eliciting feedback/suggestions on potential areas of improvement in the Regulations as identified by the Committee in its review.

2. Identification of Potential Areas - Regulatory Review

The Committee focussed on streamlining requirements and procedures governing takeover transactions by listed companies; benchmarking the same with international best practices; removal of ambiguities in subsidiary legislation; and introduction of additional measures for protection of minority shareholders. The key areas of potential improvement are as follows:

- a) Timing of Public Announcement of Intention
- b) Public Offer Timelines
- c) Determination of weighted average price
- d) Minimum Offer Price Criteria for Not Frequently Traded Shares
- e) Determination of Offer Price for not frequently traded shares
- f) Voluntary Offers
- g) Obligations of MTO
- h) Disclosures by Listed Company
- i) Indirect/Chain Acquisitions

3. Initial Stakeholder Consultation

Prior to framing its recommendations, the Committee conducted preliminary stakeholder consultations to obtain suggestions and views from market participants. Suggestions were received from law firms, chartered accountants, consultants to the issuer/manager to the offer (MTO) and listed companies.

4. Potential Areas for Improvement

Potential areas for improvement in the Takeover Regulations along with the rationale based on which these areas have been identified are detailed below:

(i) Timing of Public Announcement of Intention

Regulation 6(2)(a) of the Takeover Regulations mandates that the acquirer must make a public announcement of intention (PAI) upon 'entering into negotiations' for a share purchase agreement. However, given the ambiguity surrounding the exact moment that constitutes 'entering into negotiations', it is proposed that concept of a 'Non-Binding Offer' may be introduced and PAI should be required immediately after the target company has accepted a Non-Binding Offer from the acquirer.

(ii) Public Offer Timelines

Amendments to the offer timetable under Regulation 8 and Schedule IX are proposed to address scenarios where a scheduled action falls on a non-business day, public holiday, or consecutive holidays. To ensure continuity and compliance with the timelines, it is proposed that such actions be automatically deferred to the immediately succeeding business day. The proposed amendment can prevent procedural delays and streamline overall execution of takeover transactions.

(iii) Determination of weighted average price

Regulation 13(1) establishes a framework for determining the offer price for frequently traded shares based on different pricing alternatives. One of the prescribed methods involves calculating the weighted average share price of the target company on the securities exchange over the 180 days preceding the date of the public announcement of public offer (PAO).

However, this requirement presents a practical challenge, as companies must calculate and finalize the weighted average share price up to the last trading day prior to the PAO. This adds operational complexity and time pressure during a critical phase of the transaction.

To address this issue, it is being considered that Regulation 13(1)(c) may be suitably amended by shifting the cut-off date for calculating the weighted average price, from the date of the PAO to three trading days prior to the PAO.

(iv) Minimum Offer Price Criteria for Not Frequently Traded Shares

Under Regulation 13(2), in order to determine the minimum Offer Price of 'Not Frequently Traded Shares' three different criteria are stipulated. There is a possibility that none of these are applicable in certain takeover transactions, e.g.

acquisition might not depend on a Share Purchase Agreement; Acquirer might not have acquired shares within last 180 days; and audited or half-yearly reviewed financial statements not older than six months may not be available.

It is therefore being considered that in such cases, the target company may be required to engage an auditor to prepare special purpose financial statements and provide the same to the acquirer for determination of offer price.

(v) Determination of Offer Price for Not Frequently Traded Shares

Regulation 13(2)(c) provides that if shares are not frequently traded, one method to arrive at price per share is the net assets value carried-out by a chartered accountant firm based on the audited or half yearly reviewed financial statements not older than six months from the date of public announcement of public offer. In case of fixed assets, being part of total assets, the chartered accountant firm shall obtain services of a valuer to carry-out valuation of fixed assets.

It is proposed that timeframe may be introduced for valuation of fixed assets. For e.g., if assets have been revalued in the past 6 to 12 months, then fresh valuation should not be required. Moreover, while calculating offer price of shares that are not frequently traded based on the net assets value, it is proposed that instead of revaluation of all fixed assets, only those fixed asset categories may be included, which make up more than 5 to 10% of the total fixed assets.

(vi) Voluntary Offers

Under Section 111 of the Act and Regulation 14 of the Regulations, the acquirer may acquire any number of voting shares through an agreement. However, where the acquisition attracts the provisions of section 111 of the Act, the acquirer shall make a public offer to acquire at least fifty percent of the remaining voting shares of the target company. Remaining shares means the total shares less the existing shareholding of the acquirer and the shares agreed to be acquired through agreement.

Remaining Shares = Total Shares - (Existing Acquirer Shareholding + Shares to be Acquired through Agreement)

It is proposed that amendments may be introduced to exclude those shareholders who have voluntarily and explicitly declined to accept the offer, from calculation of remaining shares. In such cases, additional disclosure requirements can be mandated to ensure transparency, protect shareholder interests, and balance regulatory compliance with operational efficiency.

(vii) Obligations of MTO

Under Regulation 26, the Manager to the Offer (MTO) relies solely on information provided by the acquirer. However, when determining the minimum offer price, the MTO may not have access to details of trades executed by or on behalf of the acquirer. Lack of this information can pose challenges in ensuring compliance with determination of minimum offer price requirements by MTO.

Given that such transaction data is available with the Pakistan Stock Exchange (PSX), it is proposed to introduce a provision requiring PSX to provide details of these transactions to the MTO upon request.

(viii) Disclosures by Listed Company

Instances have been observed where an acquirer evades the requirement of public offer by making a consortium which purportedly holds more than 51% voting shares of the target company. While members of this consortium breach the takeover thresholds in individual capacity, they claim that they are part of the consortium and hence seek inapplicability of Section 111(b) of the Act.

It is proposed that names and shareholding of persons who are exercising control of the target company, and any change in names/shareholding of such persons may be reported to the Commission to assess compliance of Section 111 of the Act. The frequency of such disclosures may be made applicable in the annual or half yearly financial statements, as well as event-based.

(ix) Indirect/Chain Acquisitions

Section 111 of the Act outlines both direct and indirect acquisitions of a target company. More detailed mechanism is required to provide further clarity with respect to situations where voting shares of a target company are acquired indirectly, such as through acquisition of its holding company. This regulatory gap creates ambiguity in cases involving indirect ownership changes that impact control over the target company.

The Regulations can be further strengthened by clarifying that public offer requirements would also be triggered in case of instances of indirect acquisitions i.e. if direct or indirect shareholding of the company holding shares of the target company changes beyond a certain threshold.

(x) Additional Suggestions

Additionally, stakeholders are encouraged to provide feedback on the timing of the appointment of the Manager to the Offer (MTO) to ensure its alignment with the overall takeover process. Any other Input/feedback on potential amendments to the Securities Act, 2015, or the Regulations is also welcome, particularly in areas that could enhance the efficiency, transparency, and effectiveness of the takeover regime. Such feedback will aid in identifying areas for improvement and aligning the regulatory framework with evolving market practices and stakeholder needs.

5. Format for sharing feedback/comments

Feedback on these proposed areas for improvement along with any other suggestion on the Regulations may be sent via email to Primary Market Approvals and Development Department (PMADD) at takeoverfeedback@secp.gov.pk as per below format:

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

6. Indicative Timeline

Stage	Date/Timeline	Detail
1	January 08, 2025	Publication of Consultation Paper
2	Within 15 days of publication of Consultation Paper & placement of notification on SECP website	Public comments period
3	Within 30 days of receipt of comments on the Consultation Paper	Consultation on suggestions
4	Within 30 days of conclusion of consultations	Notification of draft amendments to the Takeover Regulations and the Act