

GOVERNMENT OF PAKISTAN
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

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Islamabad, the 16th March, 2020

NOTIFICATION

S.R.O 231 (I)/2020.- In exercise of the powers conferred under section 512 read with sections 58, 82 and 83 of the Companies Act 2017 (XIX of 2017), the Securities and Exchange Commission of Pakistan is pleased to notify the following regulations, the same having been previously published in the official Gazette vide Notification No. S.R.O. 33(I)/2020 dated January 15, 2020, 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 the Companies (Further Issue of Shares) Regulations, 2020.

(2) They shall come into force at once except in the case of issues announced on or before the date of these regulations.

(3) These regulations shall apply to the 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 different rights including preference shares.

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

- (i) "Act" means the Companies Act, 2017 (XIX of 2017);
- (ii) "issue of share at discount" means issue of share at a price below face value of such share;
- (iii) "further issue of shares" means issue of shares under section 83 of the Act and does not include Initial Public Offer or offer for sale of shares by any person holding shares in listed company or further issue of shares pursuant to any scheme of arrangement including merger, demerger, amalgamation etc.;
- (iv) "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;
- (v) "exercise period" means the time period after vesting within which an employee may exercise his right to apply for shares against an option vested in him in pursuance of the Scheme;

- (vi) "exercise price" means the price payable by an employee for exercising an option granted to him in pursuance of the Scheme;
- (vii) "initial public offer or IPO" means first time offer of securities to the general public;
- (viii) "issue" for the purpose of these regulations, means further issue of shares;
- (ix) "issue size" means the total number of shares issued or proposed to be issued by a company;
- (x) "issue price" means the price per share at which shares are offered or issued;
- (xi) "issue of shares by way of other than right" means issue of shares out of the share capital of a company or body corporate to any person without right offer, either for cash or for consideration otherwise than in cash;
- (xii) "market price" for the purpose of a scheme means latest available closing price of the share 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;
- (xiii) "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;
- (xiv) "preference shares" mean the shares which carry or would carry such preferential rights or privileges as provided for in the articles of association of the company including but not limited to 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 preferential rights over the rights of ordinary shareholders to be paid in the event of winding up of the issuer; and
 - (d) voting and non-voting rights
- (xv) "right issue" means the shares offered by a company to its members strictly in proportion to the shares already held in respective kinds and classes ;
- (xvi) "scheme" means an Employees Stock Option Scheme (ESOS) approved by the Commission in accordance with procedure and on conditions specified through these regulations;
- (xvii) "schedule" means the schedule appended with these regulations.
- (xviii) "vesting" means to give or earn a right to apply for conversion of the options, granted under a scheme, into shares of the company; and
- (xix) "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, the 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 listed company issuing right shares shall, comply with the following general conditions, namely. –

- (i) board shall approve the decision to increase share capital and the said decision shall be communicated on the same day to the Commission and to the securities exchange for public dissemination;
- (ii) Fractional shares, if any, 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 paid to such of the entitled shareholders as may have accepted such offer;
- (iii) 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 of the issue;
 - (e) utilization of the proceeds of the issue;
 - (f) benefits of the issue to the company and its shareholders;
 - (g) risks, if any, associated with the issue to which the company and/or its members are exposed to;
 - (h) justification for issue of shares at, premium or at discount to face value (if applicable);
- (iv) where 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;
- (v) the letter of offer under section 83 of the Act and information specified in Schedule I to these regulations, shall be sent to all the members along with copy of the extract of the resolution of the board's meeting approving the right issue; and
- (vi) A listed company may issue right shares at face value or at premium to face value provided the directors and substantial shareholders of the company undertake in writing that:
 - (a) they will subscribe the right shares to be offered to them as per their right entitlement or arrange subscription for the same through other persons; and
 - (b) the balance of the right issue is underwritten through at least two underwriters, not being associated companies or associated undertakings of the issuer;

Explanation: An underwriter may enter into sub-underwriting arrangement through sub-underwriting agreement in writing provided such sub-underwriter is licensed by the Commission to undertake underwriting of securities.

- (2) Subject to compliance with the requirements of section 82 of the Act, a company may issue right shares at discount to face value provided the issue is underwritten in the form and manner as stated in sub-regulation (1).
- (3) The book closure for the issue shall be made within thirty days from the date of the board's resolution or within such time period as approved by the Commission.
- (4) In case of a listed company, the letter of offer of right shall be dispatched or credited within the time period as specified by the listings regulations of the securities exchange.
- (5) Right issue once announced by the board of a listed company shall not be varied, postponed, withdrawn or cancelled.

CHAPTER III BONUS ISSUE

4. Conditions for bonus issue. - (1) A company, in accordance with the provisions of its articles of association, may issue bonus shares subject to the following conditions, namely: -
 - (i) the issue of bonus shares is approved by the board;
 - (ii) in case of a listed company, the resolution of board approving to issue bonus shares is communicated to the Commission and the securities exchange on the same day i.e. on the day of the decision;
- (2) The decision of the board to issue bonus shares, once announced, shall not be varied, postponed, withdrawn or cancelled.

CHAPTER IV ISSUE OF SHARES BY WAY OF OTHER THAN RIGHT OFFER

5. Conditions for issue of shares by way of other than right offer. - (1) A public company may issue further shares, by way of other than right, under sub-section (1) of section 83 of the Act subject to the following general conditions, namely. –
 - (i) the issue is proposed by the board;
 - (ii) the aforesaid proposal of the board clearly states the following-
 - (a) proposal of the board to issue shares without right offer is subject to approval of the shareholders and the Commission;
 - (b) quantum of the issue both in terms of the number of shares and percentage of paid up capital before and after the issue;
 - (c) issue price per share and justification for the same;
 - (d) consideration against which shares are proposed to be issued i.e. cash or other than cash;

- (e) name of person(s), their brief profile, existing shareholding, if any, in the company, to whom the shares are proposed to be issued;
- (f) purpose of the issue;
- (g) justification for issue of the shares by way of other than right;
- (h) benefits of the issue to the company and its members;
- (i) breakup value per share as per the latest available audited and reviewed accounts;
- (j) consent of the person(s) to whom the shares are to be issued is(are) obtained;
- (k) the proposed new shares shall rank pari passu in all respects with the existing ordinary shares of the company. In case the proposed new shares are different from the issued ordinary shares in any respect, then the board's decision must state the differences in detail
- (l) average market price of the share, in case of a listed company, during the last three months preceding the board's decision as well as the latest available market price; and
- (m) where shares are proposed to be issued for consideration other than in cash, the value of non-cash assets or services or intangible assets shall be determined by a valuer:

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

(2) The aforesaid decision of the board, in case of a listed company shall be communicated to the Commission and the securities exchange on the same day i.e. on the date of the decision of the board.

CHAPTER V CLASSES AND KINDS OF SHARE CAPITAL

6. Conditions for issuance of shares with different 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 issue of shares with different rights is recommended by the board through resolution;
- (ii) the decision of the board shall, in addition to particulars required under clauses (a) to (g) of regulation 3 (iii), state the following-
 - (a) description of different kind of shares such as ordinary shares and preference shares;
 - (b) description of different rights such as different class in each kind, rights and privileges attached to each class or kind of capital;
 - (c) whether the shares are being issued as right or other than right;
 - (d) whether the holders of such shares shall be entitled to participate in profits or surplus funds of the company;

- (e) whether the holders of such shares shall be entitled to participate in surplus assets and profits of the company on its winding-up which may remain after the ordinary shareholders has been repaid;
 - (f) whether payment of dividend on preference shares is on cumulative or non-cumulative basis;
 - (g) in case the shares being issued are convertible into ordinary shares, then mode, mechanism and manner of such conversion;
 - (h) rights of holders of preference shares regarding dividend, participation in general meetings and voting therein before and after conversion of preference shares into ordinary shares;
 - (i) in case the shares are partially or wholly redeemable, then mode and manner of redemption;
 - (j) any other feature as deem appropriate by the board.
- (iii) the issue of shares is authorized by a special resolution;
 - (iv) the company shall seek approval of the Commission for issuance of such shares;
 - (v) the company shall not amend, alter, vary or reassess the terms and conditions of such issue without approval of the preference shares holders and the Commission;
 - (vi) in case a company perform an act which is contradictory to the provision to clause (v) above, the Commission may:
 - (a) direct such company to redeem the entire issue with immediate effect and make full compensation along with interest accrued therein, if any; or
 - (b) direct such company to convert the entire issue into ordinary shares with immediate effect; or
 - (c) give direction as deemed appropriate by the Commission through an order after providing the company an opportunity of hearing.

CHAPTER VI EMPLOYEE STOCK OPTION SCHEME

7. Condition for issue of Employee Stock Option Scheme. - (1) A public company, may issue shares to employees pursuant to a Scheme under section 83 of the Act, subject to the following conditions-

- (i) the articles of association of the company expressly provides and authorizes the offer of scheme;
- (ii) the board shall form a compensation committee for administration and superintendence of the scheme provided that the chairman of the compensation committee of listed company shall be an independent director;
- (iii) board shall consider and resolve to offer the scheme;
- (iv) the aforesaid decision of the board shall provide information required under sub-clause (a) to (f) of clause (ii) of sub-regulation (1) of regulation 5, as applicable;
- (v) the offer of scheme is authorized by a special resolution;

Provided that separate special resolution shall be required for the following, where a scheme provides so, -

- (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;
- (vi) In case shares are to be issued at discount to the face value, the company shall also obtain approval of shareholders and the Commission under section 82 of the Act;
- (vii) 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;
- (viii) 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.

- (2) There shall be a minimum period of one year between the grant of option and vesting of option.
- (3) 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 these regulations.
- (4) A company shall have the freedom to specify the lock-in period for the shares issued pursuant to an exercise of option.
- (5) An employee shall not have the 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.
- (6) In case of failure to exercise the option, the options granted shall lapse and such lapsed options may be granted to other employees within a period of thirty days from the date of lapse.
- (7) An option granted to an employee shall not be transferable to any other person except to an entitled employee of the 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 the scheme, may be entitled to retain all the vested options.

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

8. Scheme offered at the time of public offering. - If any options granted to employees in pursuance of a scheme are outstanding at the time of IPO, the offering document shall disclose number of such outstanding options, exercise price, exercise period and impact on shareholding of the members in case all the outstanding options are exercised.

CHAPTER VII GENERAL CONDITIONS, REPORTING AND DISCLOSURE REQUIREMENTS

9. 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 to such increase is passed by the members or to be passed by the members before any such increase.

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

10. Reporting. - (1) The company shall, within 30 days from the date of issue of shares, submit a report to the Commission clearly indicating the shares issued to:

- (i) directors;
- (ii) associated companies;
- (iii) other shareholders; and
- (iv) 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 progress report on utilization of the proceeds of the right issue on quarterly basis containing the following -

- (i) item-wise breakup of the proceeds utilized both in terms of amount and percentage of the total allocation made to the relevant item. The breakup

must be provided in comparative form with the utilization plan earlier disclosed to the members;

- (ii) deviation, if any, from the purpose or use of proceeds earlier disclosed to the members along-with justification for such deviation;
- (iii) the progress report shall be continuously submitted till such time the proceeds from the right issue have been fully utilized or the purpose for which the proceeds were raised is achieved.

CHAPTER VIII MISCELLANEOUS

11. 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.

12. Repeal and Savings. - (1) The Companies (Further Issue of Shares) Regulations, 2018, hereinafter referred to as the repealed regulations shall, upon coming into force of these regulations, stand repealed:

Provided that repeal of the repealed regulations shall not-

- (i) revive anything not in force at the time at which the repeal take effect; or
- (ii) affect the previous operation of the repealed instruments or anything duly done or suffered thereunder; or
- (iii) affect any right, privilege, obligation or liability acquired, accrued or incurred under or in respect of the said repealed regulations; or
- (iv) affect any penalty imposed, forfeiture made or punishment incurred in respect of any offence committed against or in violation of the repealed regulations; or
- (v) 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 affect any action taken, orders issued, relaxation granted unless withdrawn, fee paid or accrued, resolution passed, direction given under the repealed regulations 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, 2020

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(ies))
 - (c) name(s) of the statutory 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
 - (f) financial highlights of company for preceding three years including revenue/ sales, gross profit, profit before interest, tax, profit after tax, accumulated profit or (loss), total assets, total liabilities, net equity, break up vale per share, earnings per share, dividend, if any, bonus issue, if any.
 - (g) financial highlights for preceding one year of consolidated financial statements same as (f) above, if any
 - (h) detail of issue of capital in previous five years
 - (i) year wise detail of issue of capital (right issue or other than right)
 - (ii) brief details of funds utilization through previous issue of right shares, if any

(B) Details of the current right issue:

- (a) description of issue:
size of the proposed issue Rs. _____
divided into _____
of Rs. _____ each
- (b) face value of the share Rs. _____ each
- (c) basis of determination of price of the right issue
- (d) proportion of new issue to existing issued shares with condition, if any
- (e) date of meeting of board of directors (BOD) wherein the right issue was approved
- (f) names of directors attended the BOD meeting
- (g) justification for 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 the right issue
 - d) percentage of funds required financed from other sources, if any
 - e) time of completion of project
 - (ii) expected benefits of the issue to the company and its members (description and amount)
- (h) Average market price of the share of the company 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) 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 proceeds of the right issue are to be utilized
 - (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) members' eligible / entitlement of getting the Letter of Right
 - (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]



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