



PAKISTAN STOCK BROKERS ASSOCIATION

(A company setup under section 42 of the Companies Act 2017)

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PSBA/Notice-107

Aug 15 , 2023

NOTICE FOR MEMBERS

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

This is in reference to the notification **S.R.O. 1086 (I)/2023** dated Aug 15, 2023 (**attached**), whereby the comments have been invited by the SECP:

In this regard, the members are hereby requested to kindly submit your comments, if any, at psamail024@gmail.com latest by **Aug 28, 2023**, so that a consolidated response is submitted to the authorities for their consideration.

_____sd_____
AKBER ALI
Officer - Secretariat

Copy to:

1. PSBA Website

Consultation Paper

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

The objective of issuance of this Consultation Paper is to seek stakeholders' feedback as required under section 169 of the Securities Act, 2015 on the draft amendments in the Listed Companies (Substantial Acquisition of Voting Shares & Takeovers) Regulations, 2017.

SECP is fully empowered, at its discretion, to accept or not accept a recommendation in accordance with its mandate and policy objectives.

SECP reserves the right not to publish any submission received where SECP considers it not in the public interest to do so, such as where the submission appears to be libellous or offensive.

Date of Issuance: August 18, 2023

Last date for submission of comments: August 31, 2023

Email for feedback: takeoverfeedback@secp.gov.pk



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Primary Market Approvals & Development Department | Securities Market Division
PABX: +92-51-9195317, Email: takeoverfeedback@secp.gov.pk

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1. Executive Summary

This consultation paper is being published for the purpose of eliciting public opinion on draft amendments to the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Regulations, 2017 (Takeover Regulations) within a period of fourteen (14) days from the date of its placement on SECP website.

The Securities Act, 2015 (“the Act”) is the primary law governing takeovers in Pakistan. Sections 108-126 of the Act specify broader policy requirements for takeover transactions, whereas all procedural matters governing such transactions are covered under the Takeover Regulations.

The public consultation process is being initiated through the attached notification in terms of Section 169 of the Act which empowers the Securities and Exchange Commission of Pakistan (the “SECP”) to make regulations for matters pertaining to takeovers.

A consolidated version of the currently applicable Takeover Regulations can be accessed at <https://www.secp.gov.pk/document/listed-companies-substantial-acquisition-of-voting-shares-and-takeovers-regulations-2017-amended-upto-sep-30-2022-2/?wpdmdl=46165&refresh=64b7e643f3cbe1689773635>.

The SECP previously notified certain amendments to the Takeover Regulations vide S.R.O. 1828 (I)/2022 dated September 30, 2022 for making them more consistent with the Act and to align the regulations with international standards and best practices.

Since aforesaid notification of the amendments, the SECP has been evaluating impact of the proposed changes in context of possible improvements to the overall takeover regime. The instant draft amendments are being deliberated for bringing further clarity in the Takeover Regulations, and introducing further measures for protection of rights of the minority shareholders of the target company.

The major draft amendments being proposed to the Takeover Regulations are summarized in section 4 of this paper.

2. Objective of the Consultation Paper

This Consultation Paper is published for eliciting public opinion on the draft amendments to the Takeover Regulations.

3. Background

The SECP notified amendments to the Takeover Regulations vide S.R.O. 1828 (I)/2022 dated September 30, 2022. The amendments were introduced for making the regulations more consistent with the Act and to align the same with international standards and best practices.

Impact of the September 2022 amendments was being assessed continuously in line with SECP's ongoing mandate to improve upon the existing regulatory framework. The impact assessment methodology entailed review of views/feedback from stakeholders, review of developments in relation to takeover regimes in other jurisdictions and assessment of market perceptions regarding the overall takeover regime.

The instant draft amendments are accordingly being considered for bringing further clarity in the Takeover Regulations. The amendments intend to provide greater flexibility to the acquirer and shareholders of the target company with prime focus on protection of the rights of the minority shareholders.

4. Salient Features

The major areas of proposed amendments are summarized below:

- a) Insertion of following new definitions to enable consistent interpretation of these terms throughout the Takeover Regulations:
 - (i) "average daily traded volume";
 - (ii) "frequently traded shares";
 - (iii) "weighted average share price".
- b) Option is being inserted for consideration to the shareholders of the target company to be paid either wholly in cash; or if consideration is being offered in the form of securities, the same shall be accompanied with a wholly cash alternative.
- c) To ensure that shareholders of the target company are only given highly liquid securities, the types of securities to be offered as consideration is proposed to be restricted to shares of listed companies, listed debt instruments and government securities with remaining maturity of maximum 364 days.
- d) Mechanism for valuation of securities to be offered as consideration is being improved and criteria for shares of listed companies forming part of such consideration is proposed to be enhanced. Shares of listed company may be valued at the weighted average share price during 180 days preceding date of public announcement of public offer. For government securities the value is proposed to be calculated on the basis of applicable PKRV rates at the end of the day preceding the date of public announcement of public offer.

- e) It is being ensured that only highly liquid securities are acceptable as security to be furnished to manager to the offer by the acquirer for performance of obligations under the public offer. After the proposed changes, the Takeover Regulations would allow cash, bank guarantee, government securities with sufficient maturity, MTS eligible securities or a combination of all these options to be furnished as security by acquirer.
- f) Minor changes are also proposed to bring uniformity in the regulations and make the same more consistent with terminologies used in the Securities Act, 2015.

Draft notification of proposed amendments is available at the following link on SECP website:

<https://www.secp.gov.pk/document/s-r-o-1086-i-2023-draft-amendments-to-the-listed-companies-substantial-acquisition-of-voting-shares-and-takeovers-regulations-2017/?wpdmdl=48877&refresh=64df0acb257991692338891>

5. Format for sharing feedback/comments

Any feedback be sent via email to Primary Market Approvals and Development Department (PMADD) at takeoverfeedback@secp.gov.pk or by post at the following address:

Head of Department,
Primary Market Approvals & Development Department,
NICL Building, SECP Head Office,
Jinnah Avenue, Blue Area,
Islamabad.

| | | | |
|---|-------------------------|------------------|-----------|
| Name | | | |
| Name of the Related Entity | | | |
| Sr. No. | Regulation/ Section No. | 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 will be made public, except your contact information.</i> | | | |

6. Indicative Timeline

| Stage | Date/Timeline | Detail |
|-------|---|---|
| 1 | August 18, 2023 | SECP releases Consultation Paper |
| 2 | Within 14 days of issuance of Consultation Paper and placement of notification on SECP website. | Public Comments |
| 3 | Within 30 days of receipt of comments on the Consultation Paper. | Stakeholders consultation session |
| 4 | Within 30 days of conclusion of the stakeholder consultation sessions. | Notification of the final amendments of the Takeover Regulations. |

GOVERNMENT OF PAKISTAN
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

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Islamabad, the 15th August, 2023

NOTIFICATION

S.R.O. 1086 (I)/2023.- The following draft amendments to the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Regulations, 2017 proposed to be made by the Securities and Exchange Commission of Pakistan, in exercise of the powers conferred under section 169 of the Securities Act, 2015 (III of 2015), are hereby published in the official Gazette for information of all the persons likely to be affected thereby and notice is hereby given that objections or suggestions, if any, received within fourteen days from the date of its placement on the website of the Commission, shall be taken into consideration by the Securities and Exchange Commission of Pakistan, namely:-

DRAFT AMENDMENTS

In the aforesaid Regulations,

1. in regulation 2, in sub-regulation (1), -
 - (a) after clause (b), the following new clause shall be inserted, namely: -

“(ba) “average daily traded volume” means total traded volume of shares of a listed company divided by total trading days during the period under consideration;”;
 - (b) after clause (c), the following new clause shall be inserted, namely: -

“(ca) “frequently traded shares” means shares of a listed company meeting following criteria during 180 days prior to the date of public announcement of public offer:

 - (i) the shares have been traded for at least 80 percent of the trading days; and
 - (ii) the average daily trading volume of the shares in the ready market is not less than 0.5 percent of its free float or 100,000 shares whichever is higher;”;
 - (c) in clause (d), the word “and” at the end shall be omitted;

(d) after clause (e), the following new clause shall be inserted, namely: -

“(f) “weighted average share price” means the price calculated as total traded value divided by total traded volume of the underlying share in the ready market during the period under consideration;”;

2. in regulation 13, -

(a) in sub-regulation (1), -

(i) the word “announcement of” occurring first, shall be omitted;
(ii) for clauses (b), (c), and (d), the following shall be substituted, namely: -

“(b) the highest price paid by the acquirer for acquiring the voting shares of target company during the 180 days preceding the date of public announcement of public offer;

(c) the weighted average share price of target company on the securities exchange during the 180 days preceding the date of public announcement of public offer;

(d) the weighted average share price of target company on the securities exchange during 28 trading days preceding the date of public announcement of intention: and only those days shall be incorporated where the shares of the Target Company have been traded; and”;

(iii) in clause (e), for the words “six months” the expression “180 days” shall be substituted and after the words “public announcement of” the word “public” shall be inserted; and

(b) for sub-regulation (2), the following shall be substituted, namely: -

“(2) If the shares are not frequently traded, the public offer shall be at the price which is highest amongst the following, -

(a) the negotiated weighted average price under share purchase agreement(s) for the acquisition of voting shares of the target company; Provided that the expression “negotiated weighted average price” shall include total consideration paid in whatsoever manner, including the liabilities settled whether

taken over or not, personal liabilities of sellers and consideration paid either in cash or otherwise against the shares purchased;

(b) the highest price paid by the acquirer for acquiring the voting shares of target company during 180 days preceding the date of public announcement of public offer; or

(c) the price per share arrived at on the basis of net assets value carried-out by a Chartered Accountant Firm based on the audited financial data not older than six months from the date of public announcement of public offer made by the manager to the offer. In case of fixed assets, being part of total assets, the Chartered Accountant firm shall obtain the services of a valuer to carry-out value of fixed assets, whose name appears on the list of panel of valuers maintained by Pakistan Bank's Association.”;

3. in regulation 15, sub-regulation (1), -

(a) for clause (b), the following shall be substituted, namely: -

“(b) government securities with remaining maturity of maximum 364 days with ten percent margin; or”;

(b) clause (e) shall be omitted; and

(c) in clause (f), the word “debt” shall be omitted;

4. for regulation 19, the following shall be substituted, namely: -

“19. Mode of payment. - (1) The consideration for the voting shares to be acquired by the acquirer shall be payable-

(a) wholly in cash; or

(b) in the form of securities accompanied with a wholly cash alternative.

(2) In case the consideration includes securities as mentioned in clause (b) of sub-regulation (1), only the following securities or a combination thereof may be offered as consideration by the acquirer-

(a) shares of listed company owned by the acquirer or proposed further issuance of shares by the acquirer or owned by any person acting in concert subject to the following conditions, -

- (i) such company is listed for at least two years before the date of announcement of offer;
- (ii) shares of such listed company are presently being traded at normal counter of securities exchange;
- (iii) shares of such listed company are frequently traded shares during the 180 days preceding the date of public announcement of public offer:

Provided that in case of proposed further issuance of shares, appropriate regulatory approvals in accordance with the requirements of the Companies Act, 2017 are in place prior to the public announcement of offer; or

- (b) listed debt instruments owned/proposed to be issued by the acquirer or owned by any person acting in concert; or
- (c) Government securities with remaining maturity of maximum 364 days owned by the acquirer or owned by any person acting in concert;

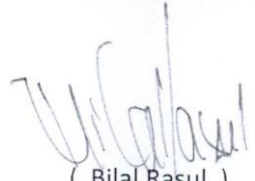
(3) The value of shares offered as consideration shall be the weighted average share price during 180 days preceding the date of public announcement of public offer.

(4) The value of government securities to be offered as consideration shall be calculated on basis of applicable Pakistan Revaluation (PKRV) rates at the end of the day preceding the date of the public announcement of public offer.”; and

5. in schedule I, in the “offer letter” for paragraph (4), the following shall be substituted, namely: -

“4. All payments payable in the form of cash or through demand draft or pay order or cheque or any other banking instrument, or the transfer of securities, against shares accepted by the acquirer will be made within a period of not more than 10 days from date of closure of the acceptance period.”.

[File No. EMD/TO/05/2008]


(Bilal Rasul)
Secretary to the Commission