



PAKISTAN STOCK BROKERS ASSOCIATION

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

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PSBA/Notice-116

September 28, 2023

NOTICE FOR MEMBERS

Proposed Amendments in the Companies (Further Issue of Shares) Regulations, 2020

Dear Members,

This is in reference to the notification S.R.O. (I)/2023. - dated **September 26, 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 **October 6, 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 Amendments in the Companies (Further Issue of Shares) Regulations, 2020

The objective of issuance of this concept paper is to seek stakeholders' feedback as required under section 512 of the Companies Act, 2017 on the proposed amendments to the Companies (Further Issue of Shares) Regulations, 2020.

Securities & Exchange Commission of Pakistan (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: September 27, 2023

Last date for submission of comments: October 10, 2023

Email address for submission: capitalissuefeedback@secp.gov.pk



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Primary Market Approvals & Development Department | Securities Market Division
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1. Executive Summary

The consultation paper is being published for the purpose of eliciting public comments on the draft amendments proposed in the Companies (Further Issue of Shares) Regulations, 2020 (the “Regulations”) within a period of fourteen days (14) days from the date of its placement on the SECP website. The notification is published in terms of powers conferred upon the Commission under Section 512 of the Companies Act, 2017 (“the Act”).

The SECP previously notified amendments to the Regulations vide S.R.O. 1754 (I)/2022 dated September 16, 2022 for aligning the same with global best practices through introduction of enhanced risk disclosure requirements and increased transparency measures. Major amendments entailed adoption of a disclosure-based regime in preparation of offering document for issuance of right shares, standardisation of different compliance requirements based on the size of right issue, provision of exit opportunity to dissenting shareholders, imposition of lock-in clause on the sponsors, standard lock-in clause for persons other than sponsors in further issue other than right, reporting of proceeds utilization by the statutory auditors and optional concepts of Minimum Level of Subscription (MLS) and ‘Applications Supported by Blocked Amounts’ (ASBA).

For further issue of shares other than right, minimum contents of valuation report were introduced along with various procedural formalities to be complied by the companies. A standardized version of the various conditions previously imposed by the Commission on companies, sponsors and incoming shareholders while processing applications for further issuance of shares by way of other than right offer, were also incorporated in the Regulations.

A consolidated version of the currently applicable Regulations can be accessed at <https://www.secp.gov.pk/document/the-companies-further-issue-of-capital-regulations-2020-amended-till-september-16-2022/?wpdmdl=45863&refresh=64b8e0df598231689837791>

Subsequent to the aforesaid notification, the SECP has been evaluating impact of the amendments in light of views/feedback received from stakeholders, key learnings from applications received pursuant to the amended regulations and the evolving trends and practices regarding further issuance of capital in other jurisdictions. Various areas of improvement have resultantly been identified for providing greater clarity; introducing enhanced and more customized disclosure requirements; and bringing changes that make the regulations more efficient, dynamic and flexible in catering to the various types and categories of further issuance of shares based on the underlying objectives. The proposed draft amendments also aim to balance roles and responsibilities of issuers in a manner that facilitates capital formation while simultaneously promoting protection of the rights of minority shareholders.

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

2. Objective of the Consultation Paper

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

3. Background

The SECP notified amendments to the Regulations vide S.R.O. 1754 (I)/2022 dated September 16, 2022. The amendments were introduced for aligning the regulations with global best practices through introduction of enhanced disclosure requirements and increased transparency measures.

Subsequent to the notification, the SECP has been evaluating impact of the amendments in light of views/feedback received from stakeholders, assessment of market perceptions regarding the overall regime, key learnings from applications received pursuant to the amended regulations and the evolving trends and practices regarding further issuance of capital in other jurisdictions.

Various areas of improvement have resultantly been identified for bringing greater clarity, introducing more customized disclosure requirements, and introducing changes that make the regulations more efficient, dynamic and flexible. The proposed amendments also aim to balance roles and responsibilities of issuers in a manner that facilitates capital formation while simultaneously promoting protection of the rights of minority shareholders.

The instant draft amendments are accordingly expected to build investor confidence through further transparency, facilitate issuers in further issuance of capital and optimize the capital formation processes under the further issue of capital regime.

4. Salient Features

The major areas of amendments being proposed are summarized below:

a) In cases of right issues:

- (i) To streamline the right issuance process, thresholds prescribed under the existing sub-regulations (2) and (3) of Regulation 3 are being omitted;
- (ii) Regulatory requirements specific to the size of the right issue in sub-regulations (2) and (3) of Regulation 3 are merged in a manner that standardized requirements, processes and disclosures, including those required for the higher threshold of right issue size, become applicable for all right issues irrespective of the issue size;
- (iii) Consequential amendments are proposed through-out the regulations in line with above proposed amendments.
- (iv) Given that right issue once announced by the board, cannot be varied, postponed, withdrawn or cancelled, the responsibility of ensuring clear CIB report of sponsors,

promoters, substantial shareholders & directors of issuing company is proposed to be placed on the board of directors of the issuing company.

- (v) Given the shift towards a disclosure-based regime and taking into consideration that right issue is the discretion of the board of directors of a company, requirements for the SECP to provide comments on the right offer document is being omitted. Accordingly, only the requirement for the issuer to submit the final offer document to the SECP is proposed to be added.
- (vi) Clarity is added in relation to placement of the draft right offer document on the PSX and issuer's website only if the issuing company opts for seeking public comments on the right offer document. In case public comments are not sought, only the final offer document is being required to be placed on the PSX website.
- (vii) Further clarity is proposed in Schedule I for more standardized and clear disclosures in the right offer document with respect to purpose of issue, issuer's group structure, risk factors specific to issue/issuer and their impact on operations/performance of the issuer.

b) In case of other than right issues:

- (i) In cases where further issuance of shares is contingent upon a future event (for e.g. conversion of preference shares or conversion of redeemable capital of banks), room is proposed to be created for non-applicability of certain provisions, as compliance with such requirements is not possible at the time of seeking approval under section 83(1)(b) of the Act (for e.g. names of potential shareholders cannot be known at the time of board meeting; issuance of shares within 60 days of SECP approval is not possible, CIBs of potential shareholders cannot be obtained etc.).

Clauses under regulation 5(1) are also renumbered for further clarity and ease of referencing.

- (ii) To facilitate issuers in overcoming any practical difficulties in complying with the regulations, flexibility is added for enabling grant of further extension of 30 days by the Commission for issuance of shares by the company.
- (iii) Lock in period for persons other than sponsors to retain their shareholding arising as a result of subject issuance is being reduced to six months and the different lock-in periods based on percentage of shareholding of such persons is proposed to be omitted.
- (iv) For sponsors, requirement is being introduced to report compliance status to the Commission with respect to lock-in clause imposed as a result of the further issuance.

c) Reporting requirements:

- (i) Regulation 10 (1): For removing duplication, reporting of allotment of shares in case of right issue is proposed to be deleted and shall be made part of Form 3 of the Companies (General Provisions and Forms) Regulations, 2018.
- (ii) Regulation 10 (2): Reporting of proceed utilization requirements are consolidated under regulation 10.

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

<https://www.secp.gov.pk/document/notification-draft-amendments-to-the-companies-further-issue-of-shares-regulations-2020/?wpdmdl=49243&refresh=6513be4d5c1091695792717>

5. Format for sharing feedback/comments

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

Head of Department,
Primary Market Approvals & Development Department,
Securities Market Division,
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			
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.			

6. Indicative Timeline

Stage	Date/Timeline	Detail
1	September 27, 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 stakeholder consultation session	Notification of the final amendments to the Regulations.

GOVERNMENT OF PAKISTAN
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

-:-:-

Islamabad, the 26th September 2023

NOTIFICATION

SRO (I) 2023.- The following draft amendments to the Companies (Further Issue of Shares) Regulations, 2020, proposed to be made by the Securities and Exchange Commission of Pakistan, in exercise of the powers conferred under section 512 read with sections 58, 82, 83 and 83 A of the Companies Act, 2017 (XIX of 2017), are hereby published, as required by proviso to the said section 512, for information of all the persons likely to be effected thereby and notice is hereby given that suggestions or objections, if any, received within a period of fourteen days from the date of its publication in the official Gazette, shall be taken into consideration by the Securities and Exchange Commission of Pakistan, namely:-

DRAFT AMENDMENTS

In the aforesaid Regulations, -

(1) in regulation 3, -

(a) in sub-regulation (1), for sub-clause (b) of clause (xiv), the following shall be substituted, namely: -

“(b) appropriate disclosures are made in line with the requirements of these Regulations;”;

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

“(2) In addition to compliance with of the general conditions provided in sub-regulation (1), a listed company issuing right shares shall comply with the following additional requirements:

- (i) The board of directors of the issuing company shall, prior to announcement of the right issue, ensure that the issuing company, its sponsor(s), promoter(s), substantial shareholder(s) and directors shall not have overdues or defaults irrespective of the amount appearing in the report obtained from Credit Information Bureau;
 - (ii) the company shall prepare and its board shall approve the draft offer document in easily understandable English and Urdu language;
 - (iii) the offer document shall contain all disclosures, as referred to in Schedule I of these regulations and such disclosure should
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be true and adequate and enable the applicants to take an informed investment decision;

- (iv) the draft offer document shall be submitted to PSX within 45 days of the date of announcement. It shall be the discretion of the company to seek public comments on the offering document and in such case, the company shall simultaneously place the draft offer document on the PSX and company's website. The public can submit its comments within 7 days of placement;
- (v) PSX shall, within 15 days of the filing of draft offer document, share its observations and changes with the company, if any;
- (vi) the board shall ensure that draft offer document is updated in light of the public comments, (if opted for), and PSX comments/observations, and shall submit final offer document to PSX and the Commission within 20 days from the date of comments/observations. Simultaneously, the Board shall also disclose in tabular form on PSX and company website as per the Schedule II, all the comments received along with the explanations as to how they are addressed;
- (vii) the final offer document shall be placed on PSX website along with book closure dates, and relevant right issuance timelines in accordance with Section 83 of the Act; and
- (viii) the sponsors shall retain their entire shareholding for one year or project completion whichever is later.”;

(c) sub-regulation (3) shall be omitted;

(d) in sub-regulation (5), the word “line” after the word “timeline”, shall be omitted;

(e) in sub-regulation (6), the expressions “(as applicable depending upon the size of the right issue)” shall be omitted; and

(f) in sub-regulation (7), the expression “(as applicable depending upon the size of the right issue)” shall be omitted;

(2) in regulation 5, in sub-regulation (1), -

(a) in clause (m), after the proviso, the following new proviso shall be added, namely: -

“Provided further that the requirements of clause (ii) sub-clauses (b), (c), (e), (i), (j), (l) and (m) shall not be applicable in case of further issuance of shares by way of other than right where the issuance is dependent on a future contingent event.”;

- (b) existing sub-clause (n) along with paragraph (i) and (ii) shall be re-numbered as “clause (iii) and “sub-clauses (a) and (b)” respectively;
- (c) existing clauses (o) shall be re-numbered as “clause (iv)” and thereafter, for the expression “(n)” the expression “(iii)” shall be substituted;
- (d) existing sub-clause (p) shall be re-numbered as “clause (v)” and thereafter the following proviso shall be added, namely: -

“Provided that the requirements of clauses (iii), (iv) and (v) shall not be applicable in case of further issuance of shares by way of other than right where the issuance is dependent on a future contingent event.”;

- (e) existing sub-clause (q) shall be re-numbered as “clause (iv)” and substituted as follow: -

“(vi) the shares shall be issued only in the book entry form within 60 days from the date of approval by the Commission or within such extended time not exceeding 30 days with the approval of the Commission:

Provided that the timeline for issuance of shares as specified in this clause shall not be applicable in case of further issuance of shares by way of other than right where the issuance is dependent on a future contingent event.”;

- (f) existing sub-clause (r) shall be re-numbered as “clause (vii)”;
- (g) existing sub-clause (s) shall be re-numbered as “clause (viii)” and substituted as follow: -

“(viii) the sponsors shall retain their shareholding arising as a result of subject issuance for at least twelve months; and at least twenty five percent of such shareholding for the next two years:

Provided that the issuer shall submit compliance report to the Commission after every six months till completion of the above-referred period;

- (h) existing sub-clause (t) shall be renumbered as “clause (ix)” and thereafter the said sub-clause shall be substituted as follow: -

“(ix) the persons other than sponsors, shall retain their shareholding arising as a result of subject issuance for a period of six months from the date of such issuance:”

(i) after clause (ix) re-numbered as above, in the proviso, for the expression “(s) and (t)” the expression “(viii) and (ix)” shall be substituted;

(j) existing sub-clause “(u)” shall be re-numbered as clause “(x)” and thereafter a new proviso shall be inserted, namely: -

“Provided that the requirements of above clause (x) shall not be applicable in case of further issuance of shares by way of other than right where the issuance is dependent on a future contingent event.”;

(5) in regulation 6, -

(a) in sub- regulation (1), in sub-clause (iva), for the words “Irrespective of the size of the issue, the” the word “The” shall be substituted; and

(b) in sub-clause (v), for the word “very” the word “vary” shall be substituted;

(6) in regulation 8C, in sub-regulation (1) in clause (iii), for the word “lime” the word “life” shall be substituted;

(7) in regulation 10, -

(a) sub-regulation (1) shall be omitted;

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

“(2) After issuance of right shares, the listed issuer shall include progress report on utilization of the proceeds of the right issue in its half yearly and annual financial statements 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 included in the financial statements till such time that the proceeds from the right issue have been fully utilized or the purpose for which the proceeds were raised is achieved.

Provided that the statutory auditor of the listed issuer, shall monitor that the proceeds are utilized in the manner referred to in the

final offer letter, and shall submit half yearly report to the issuer. The issuer will include the report of the statutory auditor, along with its comments thereon, if any, in its half yearly and annual financial statements.”;

(8) in Schedule I, -

(i) clause (7), in sub-clause (ii), -

(a) in sub-paragraph (c) of paragraph (B), for the word “lime” the word “life” shall be substituted;

(b) after sub-paragraph (g) of paragraph (B), the following new paragraph shall be inserted namely: -

“(h) If purpose of the issue is to acquire a company: -

- Relationship of the issuer with the company being acquired
- Profiles of sponsors, major shareholders and directors of the company being acquired along with percentage of their shareholding
- Ultimate beneficial owners of the company being acquired
- Details related to share purchase agreement
- Any regulatory approvals required before acquisition
- Details of business operations of the company being acquired
- Last three years financial highlights of the company being acquired
- Break-up value of shares of the company being acquired
- Offer price per share along with number of shares to be acquired
- Name of valuer and key assumptions used in calculation of offer price
- Relative price measures of the company being acquired i.e. Price to Book Value, Price to Earnings (P/E), and Price to Sales (P/S)
- Impact of acquisition on the operating and financial position of the issuer
- Any other material information

(ii) in clause (10), the word “Financial” shall be omitted and thereafter, after clause (v), the following new clause shall be added, namely: -

“(vi) Group structure along with respective shareholding in subsidiaries and associates.”;

(iii) in clause (11), for clause (ii) the following shall be substituted, namely:

-

“(ii) Risk factors shall be classified as internal and external risk factors and the issuer shall ensure that coverage of each risk factor is in manner that is specific to the issue/issuer and clearly covers the impact of the risk factor on the operations/performance of the issuer.”.

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



(Bilal Rasul)
Secretary to the Commission