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PART II

Statutory Notifications (S.R.O.)

GOVERNMENT OF PAKISTAN
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

NOTIFICATION

Islamabad, the 4th August, 2022

S. R. O. 1423(I)/2022.—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 (the Commission), in exercise of powers conferred under section 512 read with sections 58, 82, 83 and 83A of the Companies Act, 2017 (XIX of 2017), 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 fifteen days from the date of its publication, shall be taken into consideration by the Commission, namely:—

DRAFT AMENDMENTS

In the aforesaid Regulations,-

(1) in preamble, for the expressions “82 and 83” the expressions “82, 83 and 83A” shall be substituted;

(0)

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

“(ia) “Application Supported by Blocked amount “(ASBA)” means an application for subscribing to shares, where money is blocked in the subscriber's respective bank account;” and
 - (b) for the clause (xvi), the following shall be substituted, namely: -

“(xvi) “scheme” means an Employees Stock Option Scheme (ESOS) approved by the shareholders of the company through special resolution in accordance with procedure and subject to the conditions specified through these regulations;”;
- (3) in regulation 3, -
 - (a) after sub-regulation (1), the following new sub-heading is inserted, namely,

“- General Conditions”;
 - (b) in sub-regulation (1), -
 - (i) in clause (iii), after sub-clause (h), the following new sub-clauses shall be inserted, namely: -
 - (i) minimum subscription amount; and
 - (j) provision of ASBA facility (optional).”;
 - (ii) after clause (vii), the following new clauses shall be inserted, namely: -
 - “(vii) 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 listing's regulations of the securities exchange;
 - (viii) a listed issuer shall not be eligible to make a right issue if the issuer at the time of right issuance is placed on Pakistan Stock Exchange (PSX) defaulter counter. Provided that this condition will not be applicable on the companies wherein the purpose of the right issue is repayment of the respective overdues or removing defaults;
 - (ix) a listed issuer shall not be eligible to make right issue if it is

not cooperating in an investigation or inspection ordered by the Commission;

- (x) if the whole or any part of the shares offered by the issuer is declined or is not subscribed, the directors may allot such shares in such manner as they may deem fit within a period of thirty days from the close of the offer or within such extended time not exceeding thirty days with the approval of the Commission;
- (xi) right shares shall only be offered for consideration only in cash;
- (xii) right shares shall not be subscribed for consideration of already injected funds in the issuing company by the subscriber either in the form of loan or any other consideration;
- (xiii) if the board of directors fail, within extended time, to allot shares or underwriters fail to take up the unsubscribed portion, the unsubscribed right issue will be extinguished. In such cases, in addition to any other action specified under the Act against the board, the underwriter will be barred for three years from underwriting any issue of any listed issuer;
- (xiv) subject to compliance with the requirement of section 82 of the Act, a company may issue right shares at a discount to face value: provided that
 - (a) the issue is underwritten in the form and manner as stated in clause (vi) of this sub-regulation; and
 - (b) appropriate disclosures in line with the size of the issue are made;
- (xv) the listed Issuer shall not, at any time changes or deviate from the purpose of utilization of proceeds of right issue earlier disclosed to the members through Schedule 1;
- (xvi) in exceptional circumstances, the issuer may change the purpose of proceeds utilization subject to passing of special resolution and offering an exit opportunity to dissenting shareholders who have not agreed to the change in purpose of proceeds utilization;
- (xvii) the mechanism for an exit offer opportunity shall be as under

- (a) EOGM notice in respect of any change in the purpose of proceeds utilization of the issue as disclosed in the offer document shall be given along with draft special resolution as required under the provisions of the Act;
 - (b) subject to approval of special resolution as defined in the Act, the shareholders who have dissented against the special resolution and conveyed their dissent to the company secretary under intimation to PSX, shall be provided an opportunity to exit;
 - (c) during the exit opportunity, shares shall be purchased by sponsors of the issuer;
 - (d) purchase price per share shall be average market price of the period between last date of payment against right issuance and the date of passing of special resolution;
 - (e) the exit offer shall be executed by the sponsors with in a period of thirty (30) days from the date of passing of special resolution.
- (c) for sub-regulation (2), (3) and (4), the following shall be substituted, namely: -
 - “(2) In case the right issue size cumulatively during a financial or a calendar year is less than or equal to Rs.750 million or 50% of the paid-up capital of the listed company issuing right shares, whichever is lower, the listed company, in addition to compliance of the general conditions, provided in sub-regulation (1), shall —
 - (i) simultaneously place Schedule 1 on the website of Securities Exchange along with sending it to all the members with copy of the extract of the resolution of the board's meeting approving the right issue;
 - (ii) Offer letter dispatched to all shareholders should include the copy of Schedule 1;
 - (iii) the book closure for the issue shall be made within thirty (30) days from the date of board resolution or within such time period as approved by the Commission;
 - (3) In case the right issue size cumulatively during a financial or a calendar year exceeds Rs.750 million or 50% of the paid up

capital of the listed company issuing right shares, whichever is higher, the listed company, in addition to compliance of the general conditions, provided in sub-regulation (1), shall comply with the following conditions, namely:

- (i) no company shall issue right exceeding the above referred threshold if the issuing company, its sponsor, promoter, substantial shareholder and directors 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 be true and adequate and enable the applicants to take an informed investment decision;
- (iv) the draft offer document shall be submitted to PSX and the Commission within 45 days of the date of announcement and it shall simultaneously be placed by the listed company on the PSX and company's website. The public can submit its comments within 7 days of placement;
- (v) PSX and the Commission shall, within 15 days of the filing of draft offer document, share their 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, PSX and the Commission comments/observations, and shall submit final offer letter to PSX within 20 days from the date of comments/ observations, whichever is later. 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;

- (viii) the sponsors shall retain their entire shareholding for one year or project completion whichever is later;
 - (ix) the statutory auditor shall monitor the proceed utilization till 95% of the proceeds are utilized in the manner referred to in the final offer letter, and shall submit quarterly report to the issuer. The issuer will include the report, along with its comments, if any, in its quarterly and annual financial statements.";
- (d) sub-regulation (4) shall be omitted;
- (e) in sub-regulations (5), for the full stop at the end the words "except that it will stand extinguished in case it is not completed within the timeline line and manner specified with in these regulations." shall be substituted; and
- (f) after sub-regulation (5), amended as aforesaid, the following new sub-regulations shall be inserted, namely: -
- “(6) The company can opt for announcing minimum subscription amount: being less than the total amount of right announced. In instant scenario, the company in addition to complying with the requirements (as applicable depending upon the size of the right issue) as mentioned in Regulation 3 above, shall comply with the following conditions, -
- (i) minimum subscription amount should not be less than 90% of size of right issue;
 - (ii) directors/substantial shareholders undertake in writing that they will subscribe the right shares to be offered to them as per their right entitlement to the extent of their proportion of minimum subscription;
 - (iii) public portion of minimum subscription shall be underwritten by the underwriter, not being associated company or associated undertakings of the issuer;
 - (iv) right entitlement letter will be traded on PSX, risk and rewards shall be sole liability of the investors.
- (7) The company can opt for ASBA facility for receiving of right proceeds and in case the company announces the option of ASBA facility it, in addition to complying with the requirements (as applicable depending upon the size of the right issue) as

provided in regulation 3, shall also comply with the following conditions, -

- (i) the company or banker to the issue, upon receipt of instructions from the subscriber, immediately block the subscription money in respective account of the subscriber;
- (ii) in case of subscribers other than ASBA, if the company fails to refund the subscription amount within 15 days, it shall be liable to pay penalty of 15% per annum to the subscriber along with the subscription amount";

(4) in regulation 5, -

- (a) in sub- regulation (1), in clause (ii), in sub-clause (m), in the proviso, for the full stop at the end, the expressions " and the valuers must be registered as per the requirements of regulation 8A and 8B of the regulations;" shall be substituted;
- (b) after sub-clause (m), the following new sub-clauses shall be inserted, namely: -

“(n) the company shall invite claims, if any, on the non-cash assets through advertisement in the widely circulated newspaper both English and Urdu language clearly mentioning the fact that

- (i) after issuance of shares the title of the assets will be transferred in the name of the issuer; and
- (ii) claims must be submitted to the statutory auditors (insert name) within seven (7) days of the date of advertisement;
- (o) the company shall intimate the Commission, at the time of seeking approval, confirming details of claims received and settled as referred in sub-clause (n) verified through its statutory auditor along with an affidavit that the information is correct to the best of their knowledge;
- (p) non-cash assets shall be transferred in the name of issuer within sixty (60) days of the date of approval by the Commission or within such extended time not exceeding 30 days with the approval of the Commission;
- (q) the shares shall be issued only in the book entry form within 60 days from the date of approval by the

Commission;

- (r) the issuer shall intimate the Commission and the securities exchange about issuance of the shares within seven days of the issuance;
- (s) 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 their shareholding for the next two years;
- (t) the persons other than sponsors, shall retain their shareholding arising as a result of subject issuance from the date of their issuance as follows
 - (i) for a period of one year, in case such shareholding is not more than ten percent (10%) of the issuer's respective paid up share capital;
 - (ii) for a period of two years, in case such shareholding is above ten percent (10%) but not more than twenty five percent (25%) of the issuer's respective paid up share capital; and
 - (iii) for a period of three years, in case such shareholding is above twenty five percent (25%) of the issuer's respective paid up share capital:

Provided that the conditions referred in sub-clauses (s) and (t), shall not be applicable in case where offer price is at premium to the market price of the share of the company and free float of the issuing company is less than 10% of its listed capital;

- (u) the person(s) to whom share are being issued shall not have overdues or defaults irrespective of the amount appearing in the report obtained from Credit Information Bureau."

[File. No. CSD/BBR/124/2018.]

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