

**PART II**

**Statutory Notifications (S.R.O.)**

**GOVERNMENT OF PAKISTAN**

**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN  
NOTIFICATION**

*Islamabad the 8th February, 1996*

**S. R. O. 110(I)96.-** In exercise of the powers conferred by section 506 of the Companies Ordinance, 1984 (XLVII of 1984) read with Finance Division's Notification No. S.R.O. 698(I) 86, dated the 2nd July, 1986, the Securities and Exchange Commission of Pakistan is pleased to make the following rules, the same having been previously published as required by sub-section (1) of the said section, namely:-

**THE COMPANIES (ISSUE OF CAPITAL) RULES, 1996**

**1. Short title, commencement and application.-**(1) These rules shall be called the Companies (Issue of Capital) Rules, 1996.

(2) They shall come into force at once.

(3) They shall apply to-

- (i) the companies proposing to offer share capital to the public;
- (ii) listed companies proposing to increase share capital through right issue or bonus issue;
- (iii) all companies proposing to issue shares for consideration otherwise than in cash;
- (iv) certain persons offering shares for sale to the public;
- (v) sponsors of the issuing companies; and
- (vi) underwriters to the issue or public offers.

**2. Interpretation.-** In these rules the words and expressions used shall have the same meanings as are assigned to them in the Companies Ordinance, 1984 (XLVII of 1984) and the Securities and Exchange Ordinance, 1969 (XVII of 1969) and the rules and regulations made thereunder.

**3. Policy for issue of capital.-** A company which proposes to raise capital through public offer for the first time shall comply with the following conditions, namely:-

- (i) the project, if any, for which the capital is raised shall be appraised by a commercial bank, development financial institution or an investment bank not being an associated company or associated undertaking of the issuing company;
- (ii) the size of capital to be issued shall be in accordance with the financial plan which is provided in the feasibility report prepared by any commercial bank, development financial institution or an investment bank and in the project appraisal report prepared by an institution financing the project;
- (iii) the feasibility report and the project appraisal report shall be accompanied by a certificate from the company's auditors confirming that:
  - (a) the shares allocated to sponsors, foreign and local investors, if any, have been fully paid for;
  - (b) at least eighty percent of the sponsors' subscription has been utilized in the project;
  - (c) the land for the project has been acquired and transferred in the name of the company; and
  - (d) letters of credit have been opened, where required;
- (iv) the stock exchange concerned shall, through a firm of consulting engineers registered with the Pakistan Engineering Council and whose name appears as a valuer on the panel of at least two commercial banks, development financial institutions, investment banks or any combination thereof, verify that at least thirty percent (in terms of cost) of the plant and machinery has been installed and the last consignment of plant and machinery has been shipped to the company;

Provided that the cost incurred for the verification shall be borne by the company;
- (v) the sponsors shall retain their entire shareholding for a period of at least three financial years from the date of public subscription or from the date of commencement of commercial operations or production by the issuer, whichever is later;

Provided that where the sponsors of a company hold more than 51% shares at the time of public offer the shares in excess of 51% can be disposed off at any time if not otherwise required to be retained under any other applicable law;
- (vi) the issue shall be fully underwritten and the underwriters not being associated companies or associated undertakings of the issuer shall include at least two commercial banks, development financial institutions or investment banks or any combination thereof and the underwriters shall evaluate the project through independent due diligence reports;

- (vii) the sponsors shall not enter into any agreement or arrangement with the underwriters or any other person with respect to the purchase of shares taken up by the underwriters to the issue;
- (viii) the underwriters shall not enter into any sale agreement or arrangement with the issuer, its sponsors or its associated companies and associated undertakings with respect to the shares underwritten by them; and
- (ix) the provisions of clauses (i), (ii), (iii) and (iv) shall only be applicable where the funds raised through a public offer are being utilized for financing the modernization, replacement or expansion of an existing project or a green field project.

Explanation:- For the purpose of clause (ix) a “green field project” means a project that is being newly built like new factories, power plants, airports etc.

**4. Issue of shares on premium.-** A company may issue shares to the public on premium subject to the following conditions, namely:-

- (i) the company has commenced commercial operations at least one year prior to the offering of shares to the general public and based on its latest audited accounts for at least twelve months, it has:
  - (a) positive earning per share;
  - (b) operating profit; and
  - (c) no accumulated losses.

Explanation:- For the purpose of this clause, “operating profit” means the profit of a company earned from its principal operations.

- (ii) the premium on public offering shall not exceed the amount of premium charged on pre-IPO placements with foreign or local institutions and the names and addresses of such institutions shall be disclosed in the prospectus;
- (iii) the issue shall be fully underwritten and the underwriters, not being associated companies or associated undertakings of the issuer, shall include at least two commercial banks, development financial institutions , investments banks or any combination thereof and the underwriters shall give full justification of the amount of premium through independent due diligence reports;
- (iv) the due diligence reports of the underwriters shall be made available, for inspection by the prospective investors, at the company’s registered office during the period from the date of publication of the prospectus till the date of closing of the public subscription;

- (v) full justification for premium shall be disclosed in the prospectus;
- (vi) the employees of the company getting preferential allocation, if any, out of the offer shall be charged premium at the same rate as the public;
- (vii) the shares allotted to any person on account of preferential allocation at par, shall not be saleable and transferable for a period of two years from the date of public subscription.
- (viii) the issuer shall ensure that the shares allotted under clause (vii) are deposited in a blocked account with the Central Depository Company of Pakistan Limited;
- (ix) the issuer shall within ten days of the credit of the shares in the blocked account intimate particulars of the blocked account to the Commission and the stock exchange(s) on which shares are listed:  
Provided that all charges for opening and maintaining the blocked account shall be borne by the shareholder; and
- (x) the provisions of clauses (i) to (v) shall not be applicable on the issue of shares where the issue is made through the book building process in accordance with the listing regulations of a stock exchange in Pakistan.

**5. Issue of right shares by a listed company.-** A listed company may issue right shares subject to the following conditions, namely:-

- (i) the company shall not make a right issue within one year of the first issue of capital to the public or further issue of capital through right issue:  
Provided that this clause shall not be applicable to a right issue made for meeting the minimum equity requirements of any law for the time being in force;
- (ii) the board of directors of the company while deciding the right issue shall in its minutes and resolution clearly record the quantum of the issue, the issue price per share, the purpose of the right issue, its benefits to the company, use of expected proceeds of the issue and financial projections for three years. The financial plan, if any, and financial projections shall be signed by all the directors who were present in the meeting in which the right issue was approved;
- (iii) the decision of the company to issue right shares, along with the information as prescribed in clause (ii) and a copy of the financial plan, if any, shall be communicated to the Commission and the respective stock exchange(s) on the day of the decision and the stock exchange(s) shall immediately disseminate the information about the quantum and purpose of the issue, the issue price, its benefits to the company and use of expected proceeds, by posting the same on its notice board,

- circulation to its members, notification of the decision of the company to issue right shares on the automated information system and making an announcement on the floor of the exchange;
- (iv) in case the right shares are issued at a premium, the issue shall be fully underwritten and the underwriters, not being associated companies or associated undertakings of the issuing company, shall include at least two commercial banks, development financial institutions or investment banks or any combination thereof and the underwriters shall give full justification for the amount of premium through independent due diligence reports;
  - (v) the right issue, at par value, of a loss making company or a company whose market share price during the preceding six months has remained below par value shall be fully and firmly underwritten:  
*Explanation: - For the purpose of this clause "a loss making company" means a company having accumulated losses despite having profitable operations for the current year.*
  - (va) purpose of the issue, uses of the proceeds of the issue and full justification of the amount of premium, if any, shall be stated in the offer letter to be sent to the members of the company;
  - (vb) right issue at a discount to par value may be made without being underwritten if deemed appropriate by the board of directors of the issuing company;
  - (vi) book closure shall be made within forty-five days of the announcement of the right issue and the payment and renunciation date once announced for the letter of right shall not be extended except under special circumstances and with the prior written permission of the respective stock exchange;
  - (vii) if an announcement of the issue of bonus and right shares is made simultaneously, the resolution of the board of directors shall specify whether the bonus shares covered by the announcement qualify for right entitlement;
  - (viii) the sponsors shall not enter into any agreement or arrangement with the underwriters or any other person with respect to the purchase of shares taken up by the underwriters to the issue;
  - (ix) the underwriters shall not enter into any sale agreement or arrangement with the issuer, its sponsors or its associated companies and associated undertaking with respect to the shares underwritten by them; and
  - (x) the right issue once announced shall not be varied, withdrawn or cancelled.

**6. Issue of bonus shares by listed companies.---** A listed company may issue bonus shares subject to the following conditions, namely:--

- (i) the bonus shares shall be issued at par value and out of the free reserves of the company; and
- (ii) the decision of the directors to issue bonus shares shall be communicated to the Commission and the respective stock exchange(s) on the day of the decision and the intimation letter shall be accompanied by the auditor's certificate stating that sufficient free reserves are available to issue bonus shares.

*Explanation.-----*"free reserves" includes any amount which, having been set aside out of revenue or other surpluses after adjustment of all intangible or fictitious assets, is available to meet any diminution in value of assets, specific liability, contingency or commitment known to exist at the date of the latest available audited balance sheet, but does not include----

- (a) reserves created as a result of re-valuation of fixed assets;
- (b) goodwill reserve;
- (c) depreciation reserve to the extent of ordinary depreciation including allowance for extra shifts admissible under the Income Tax Ordinance, 2001;
- (d) development allowance reserve created under the provisions of the Income Tax Ordinance, 2001;
- (e) workers welfare fund;
- (f) provisions for taxation to the extent of the deferred or current liability of the company;
- (g) capital redemption reserve; and
- (h) unrealized capital gain.

7. (Omitted)

**8. Issue of shares for consideration otherwise than in cash.-** A company may, with prior written approval of the Commission, issue shares for consideration otherwise than in cash subject to *inter-alia* the following conditions, namely:--

- (i) The value of assets shall be determined as follows;
  - (a) the value of plant and machinery shall be determined by a firm of consulting engineers registered with the Pakistan Engineering Council and whose name appears as a valuer on the panel of at least two commercial banks,

- development financial institutions, investment banks or any combination thereof;
- (b) the value of immovable property *i.e.* land, building, etc shall be determined by an independent valuer, whose name appears as a valuer on the panel of at least two commercial banks, development financial institutions, investment banks or any combination thereof;
  - (c) the valuation of securities shall be determined by a firm of practicing chartered accountants having satisfactory quality control review awarded by the Institute of Chartered Accountants of Pakistan; and
  - (d) the value of natural resources and their exploration shall be determined by a firm of consulting engineers qualified for the purpose and approved by the Commission.
- (ii) the value of assets taken over shall be reduced by depreciation charged on consistent basis;
  - (iii) the goodwill and other intangible assets, except services, shall be excluded from the consideration against which shares are to be issued;
  - (iv) certificate from a practicing chartered accountant shall be obtained to the effect that the above mentioned conditions have been complied with;
  - (v) in case of immovable property, copies of the following documents shall be furnished to the Commission for obtaining approval:
    - (a) clean title of the seller to the property;
    - (b) draft sale deed to be executed between the seller and the company;
    - (c) a due diligence certificate from a lawyer that the title of the property is clean and free from encumbrances; and
    - (d) the valuation report as required under clause (i).
  - (vi) in case of the movable property, copies of the following documents shall be furnished to the Commission for obtaining approval:
    - (a) draft sale agreement to be executed; and
    - (b) the valuation report as required under clause (i).
  - (vii) in case of services, copies of the following documents shall be provided to the Commission for obtaining approval:
    - (a) agreement for the services, to be executed between the company and the service provider;
    - (b) details about the nature of service(s); and

- (c) valuation report of the services through a certified valuer/chartered accountant firm having satisfactory quality control review obtained from the Institute of Chartered Accountants of Pakistan.
- (viii) the company shall, within one month of the allotment of shares, file copies of the following documents with the registrar:
  - (a) in case of immovable property, the title of the company showing ownership of property;
  - (b) the executed sale deed;
  - (c) valuer's certificate; and
  - (d) auditors' certificate confirming receipt of full consideration by the company against shares allotted;
- (ix) no shares shall be issued unless the full consideration has been received by the company.

**9. Offer for sale of shares by certain persons.--** A person or group of persons who holds more than ten percent of the shares of a company may offer such shares for sale to the public subject to the following conditions; namely;--

- (i) in case of offer of shares of an unlisted company, the size of the capital to be offered to public through offer for sale shall not be less than one hundred million rupees;
- (ii) in case of offer of shares of a listed company, the size of the capital to be offered to public through offer for sale shall not be less than one hundred million rupees or twenty-five per cent of the capital, which ever is less;
- (iii) no premium shall be charged unless the company whose shares are offered has commenced commercial operations at least one year prior to the offering of shares to the general public and based on its latest audited accounts for at least twelve months, it has:
  - (a) positive earning per share;
  - (b) operating profit; and
  - (c) no accumulated losses;

Explanation:- For the purpose of this rule, "group of persons" means two or more persons collectively offering shares of a company to the general public out of their shareholding and "operating profit" means the profit of a company earned from its principal operations;

- (iv) in case a premium is to be charged on the sale of shares, the offer shall be fully underwritten and the underwriters, not being the associated companies or associated

- undertakings of the offerer and the company whose shares are offered shall include at least two commercial banks, development financial institutions, investment banks or any combination thereof and the underwriters shall give full justification of the amount of premium through independent due diligence reports;
- (v) due diligence reports of the underwriters shall be made available, for inspection by the prospective investors, at the companies registered office during the period from the date of publication of the offer for sale document till the date of closing of public superscription;
  - (vi) full justification for the amount of premium shall be disclosed in the offer for sale document; and
  - (vii) the provisions of clauses (iii) to (vi) shall not be applicable on offer for sale where the offer is made through the book building process in accordance with the listing regulations of a stock exchange in Pakistan.

**10. Relaxation of rules.-** Where the Commission is satisfied that it is not practicable to comply with any requirement of these rules in a particular case or class of cases, the Commission may, for reasons to be recorded, relax such requirement subject to such conditions as it may deem fit.

**11. Penalty.-**Whoever fails or refuses to comply with, or contravenes any provision of these rules, authorizes or permits such failure, refusal or contravention, shall, in addition to any other liability under the Ordinance, be also punishable with fine not exceeding five hundred thousand rupees, and in case of continuing failure, refusal or contravention, to a further fine not exceeding ten thousand rupees for every day after the first day during which such contravention continues.

\*\*\*