

PART II

Statutory Notifications (S.R.O.)

GOVERNMENT OF PAKISTAN CORPORATE LAW AUTHORITY

NOTIFICATIONS

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, the 2nd July, 1986, the Corporate Law Authority is pleased to make the following rules, the same having been previously published as required by sub-section (1) of the said section, namely:-

COMPANIES (ISSUE OF CAPITAL) RULES, 1996

1. **Short title, commencement and application.**— (1) These rules may 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; and
- (v) sponsors of the issuing and listed companies.

2. **Interpretation.**— (1) In these rules, unless there is anything repugnant in the subject or context;

- (i) sponsors means,-
 - (a) a person who has contributed initial capital in the issuing company and has the right to appoint majority of the directors on the board of the issuing company directly or indirectly by virtue of shareholding held in its own name and/or in the names of his relatives, associated companies and associated undertakings;

- (b) a person who replaces the person referred to in clause (a) above; and
- (c) a person who has management control of the issuing company.

(2) 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).

3. Conditions for issue of capital.— A company which proposes to raise capital through offer of shares to the general public shall comply with the following conditions, namely,-

- (i) the names of the existing sponsors and other shareholders of the company along with the number of shares held, subscription price per share, the names of persons to whom shares have been allocated as Pre-IPO placement along with number of shares allocated and price per share shall be disclosed in the prospectus;
- (ii) the issue shall be fully underwritten by at least two underwriters and the underwriters shall not be associated companies or associated undertakings of the issuing company;
- (iii) the sponsors shall not enter into any agreement or arrangement directly or indirectly with the underwriters with respect to the purchase of shares taken up by the underwriters to the issue;
- (iv) the sponsors of the issuing company shall retain their entire shareholding in the company for a period of not less than twelve months from the last date for the public subscription or from the date of commencement of commercial operation or production by the company, whichever is later;
- (v) the sponsors of the issuing company shall retain not less than twenty five percent of the paid-up capital of the company for not less than three financial years from the last date for the public subscription or from the date of commencement of commercial operations or production by the company, whichever is later;
- (vi) subject to clauses (iv) and (v), the sponsors of the issuing company may sell their excess shareholding through block-sale and shall report the sale of shares to the stock exchange on which the shares are listed on the same day.

Explanation.--The shares held by sponsors shall be deposited in a blocked account with a central depository company; and

- (vii) in case capital is being raised for a green field project, balancing, modernization and replacement or expansion,-

- (a) the size of capital to be issued shall be in accordance with the financial plan which shall be disclosed in the prospectus and variations, if any, in the financial plan till publication of the prospectus alongwith rationale for such variations shall also be disclosed in the prospectus;
- (b) the company shall before making the offer of shares to the general public provide the Commission a certificate from its auditors confirming that,-
 - (I) the shares allocated to sponsors, foreign and local investors, if any, have been fully paid for;
 - (II) eighty per cent of the proceeds of the sponsors' subscription or equivalent thereof have been utilized in the project or the issuing company has opened an escrow account with a schedule bank where proceeds of the offer to the general public shall be kept and shall be utilized after eighty percent of the proceeds of the sponsors' equity subscription or equivalent thereof has been utilized;
 - (III) the land for the project, where required, has been acquired;
 - (IV) letters of credit, where required, have been opened; and
 - (V) entire plant and machinery, where required, has been dispatched to the company by the supplier;

Explanation,-- For the purpose of this clause, the term, “plant and machinery”, means the equipments that are essential for commencement of the commercial production or operation.

- (c) the issuing company shall obtain a report from a company, not being an associated company or associated undertaking of the issuing company, whose name appears, as a valuer, on the panel of Pakistan Banks Association verifying the implementation status of the project to be disclosed in the prospectus; and
- (d) the issuing company shall submit a quarterly progress report on implementation of the project to the Commission for information and to the stock exchange concerned for public dissemination till commencement of the commercial production or operation of the project.

Explanation.— For the purposes of this clause “green field project” means a project that is being newly built e.g. new factories, power plants, airports, etc.

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

- (i) the company has commenced commercial operations and based on its latest audited accounts for not less than twelve months, it has-
 - (a) positive earnings per share; and
 - (b) profit from its principal operations.
- (ii) save as provided in clause (vi), the premium on public offering shall not exceed the amount of premium charged on placements with foreign or local investors, if such placement has been made within a period of six months preceding the opening of the public subscription and the names and addresses of such investors shall be disclosed in the prospectus;
- (iii) the issue shall be fully underwritten in the manner as provided in clause (ii) of rule 3 and the conditions prescribed in clause (iii) of rule 3 shall be fulfilled;
- (iv) the company shall justify the amount of premium per share which shall be disclosed in the prospectus;
- (v) the employees of the company getting preferential allocation, if any, shall be charged premium at the same rate as the public;
- (vi) the shares allotted or allocated to any person on account of preferential allocation, within a period of six months preceding the opening of the public subscription, at a price lesser than the price at which shares are to be offered to the general public shall not be saleable or transferable for a period of six months from the date of close of the public subscription;
- (vii) the issuing company shall ensure that the shares allotted on account of preferential allocation under clause (vi) are deposited in a blocked account with a central depository company:

Provided that charges of opening and maintaining of such account shall be borne by the holder of such shares; and
- (viii) the provisions of clauses (i) and (ii) shall not be applicable where the issue is made through the book building process in accordance with the relevant regulations of a stock exchange in Pakistan.

5. Issue of right shares of a listed company.— A listed company may issue right shares subject to 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/paid up capital requirements under any law:

Explanation.— For the purpose of this clause, the time period of one year, in case of first issue of capital to the public shall be counted from the last date for public subscription of such first issue and the time period of one year, in

case of previous right issue, shall be counted from the last date for payment for such previous right issue;

- (ii) the board of directors of the company while deciding the right issue shall in its resolution clearly record the quantum of the issue, issue price per share, purpose of the right issue, use of the proceeds of the issue, its benefits to the company and the risk factors associated with the right issue if any;
- (iii) the resolution of the board of directors to issue right shares and a copy of the financial plan shall be sent to the Commission and the respective stock exchange(s) for public dissemination on the day of the resolution;
- (iv) the company may charge premium on right shares if, -
 - (a) sponsors of the company undertake to subscribe at least forty per cent of the right issue and in case sponsors shareholding entitle them to less than forty per cent of the right issue then sponsors shall arrange subscription for the balance shares from other shareholders; and
 - (b) the balance right issue is fully underwritten in the manner as provided in clauses (ii) and (iii) of rule 3.
- (v) in the case of right issue, at par value, of a loss making company or a company whose market price of share during the preceding six months has remained below par value, sixty percent of the right issue shall be underwritten in the manner as provided in clauses (ii) and (iii) of rule 3 and for the balance forty percent the sponsors shall provide an undertaking that they will subscribe the right shares to be offered to them and in case sponsors shareholding entitle them to less than forty per cent of the right issue then sponsors shall arrange subscription for the balance shares from other shareholders;

Explanation.— For the purpose of this clause “a loss-making company” means-

- (a) a company which is incurring losses as per its latest audited accounts despite having accumulated profits, if any; and
 - (b) a company having accumulated losses as per its latest audited accounts despite having profitable operations for the current year;
- (vi) the book closure shall be made within thirty days of the resolution by the Board and the payment and renunciation date once announced for the letter of right shall not be extended;
 - (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 directly or indirectly with the underwriters for the purchase of shares taken up by the underwriters to the issue; and
- (ix) in case purpose of the right issue is to finance a project like expansion, BMR etc. the company shall submit a quarterly progress report on implementation of such project till its completion to the Commission for information and the stock exchange concerned for public dissemination; and
- (x) a right issue once announced shall not be varied, postponed, withdrawn or cancelled.

5A. Right to renounce a right offer.— (1) Where members of a company are offered right shares, the directors may, unless the articles of the company provide otherwise, allow the members to renounce their right to subscribe such shares in favour of any other person and the letters of right issued to the members shall contain a statement of this right.

(2) The directors' decision under sub-rule (1) to allow another person to subscribe to shares in place of the member shall be deemed to be a decision under sub-section (7) of section 86 of the Companies Ordinance, 1984 if the said person decides to subscribe to such shares.

(3) The time announced by the company, within which the letters of right shall be subscribed, shall not be more than ninety days from the date of resolution by the board of directors regarding approval of the right issue and the shares against the paid letters of right shall be credited and/or dispatched within a period not exceeding one hundred and twenty days from the date of resolution of the board of directors:

Provided that the Commission may, upon a reasoned request of the company extend the above time for a period of not more than thirty days.

(4) Right issue shall be made according to the schedule approved by the stock exchange concerned.

(5) If the time period announced by the company for payment of letters of right and credit and/or dispatch of shares against paid letters of right is less than the time period provided in sub-rule (3) it may be extended by the company in consultation with the stock exchanges on which such shares are listed, subject to the maximum time allowed under sub-rule (3).

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

- (i) the resolution of board of directors to issue bonus shares shall be communicated to the Commission and the respective stock exchange on the day of the decision for public dissemination;
- (ii) the company shall retain at least twenty five per cent of the enhanced paid up capital as free reserve;
- (iii) a certificate shall be obtained by the company from the auditor certifying that:-
 - (a) the free reserves retained after the issue of bonus shares are not less than twenty five per cent of the increased paid up capital of the company; and
 - (b) all contingent liabilities have been deducted while calculating the minimum residual reserve of twenty five per cent and such certificate shall be sent to the Commission for information and the respective stock exchange on the day of decision for the public dissemination.

Explanation.— For the purposes of this rule the term “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 free and that it is not retained to meet any diminution in value of assets, specific liability, contingency or commitment known to exist at the date of the 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 or otherwise as admissible under the Income Tax Ordinance, 2001(XLIX of 2001);
- (d) development allowance reserve created under the provisions of the Income Tax Ordinance, 2001(XLIX of 2001);
- (e) provisions for taxation to the extent of the deferred or current liability of the company;
- (f) capital redemption reserve; and
- (g) unrealized capital gain.

7. Offer for sale of shares by privatized companies.— Where a company has been privatised by the Federal Government or a Provincial Government, the new management shall not offer shares to the public for a period of three years from the date of privatization at a price higher than the purchase price per share adjusted by right or bonus issue or any other distribution made out of the pre- acquisition reserves.

8. Issue of shares for consideration otherwise than in cash.— A company may issue shares for consideration otherwise than in cash subject to the following conditions, namely;--

- (i) the value of assets, services and resources shall be determined as follows:-
 - (a) the value of plant and machinery shall be determined by at least two independent companies registered with the Pakistan Engineering Council as consultant and whose names appear, as a valuer, on the panel of Pakistan Banks Association;
 - (b) the value of immovable property i.e. land, building, etc. shall be determined by at least two independent companies, whose names appear, as a valuer, on the panel of Pakistan Banks Association;
 - (c) the valuation of services, shall be determined by at least two firms of practicing chartered accountants having satisfactory Quality Control Review awarded by the Institute of Chartered Accountants of Pakistan;
 - (d) the value of securities, shall be determined by at least two firms of practicing chartered accountants having satisfactory Quality Control Review awarded by the Institute of Chartered Accountants of Pakistan;
 - (e) the value of natural resources and exploration thereof shall be determined by at least two independent companies having an experience of at least five years in the relevant field and whose names appear, as a valuer, on the panel of Pakistan Banks Association; and
 - (f) the value of all other assets, not covered in clauses (a) to (e) above shall be determined by at least two companies or firms having experience as a valuer of at least five years in the relevant field and whose names appear, as a valuer, on the panel of Pakistan Banks Association:

Provided that the valuation shall not be older than six months from the date of submission to the registrar and that the Commission may require the issuing company to undertake valuation of the consideration from any third valuer;

- (ii) the value of assets taken over shall be reduced by depreciation charged on consistent basis;
- (iii) for issue of shares against goodwill and other intangible assets the issuing company shall obtain prior written approval of the Commission; and
- (iv) the company, before the allotment of shares, shall file with the registrar copies of the following documents, namely;--

- (a) documents relating to the title of the seller of the property;
- (b) due diligence certificate from an independent legal counsel/advocate that the title of the property or consideration is free from all types of encumbrances;
- (c) the valuation report as required under clause (i) duly certified by the company secretary and chief financial officer of the issuing company;
- (d) the executed sale deed;
- (e) any authentic document evidencing transfer of ownership of the consideration in the name of the issuing company; and
- (f) auditors' certificate confirming receipt of full consideration by the issuing company against the proposed allotment of shares.

9. Offer of sale of shares by certain persons.— (1) A person or group of persons, holding more than ten per cent shares of a company, may offer such shares for sale to the public subject to the following conditions, namely:-

- (i) in case of offer for sale of shares of a listed company, the size of the capital to be offered to the public shall not be less than one hundred million rupees or twenty-five per cent of the capital, whichever is less;
- (ii) in case of offer for sale of shares of an unlisted company, the size of the capital to be offered to the public shall be in accordance with the listing regulations of the concerned stock exchange;
- (iii) no premium shall be charged unless-
 - (a) the company whose shares are offered fulfills the requirements of clauses (i)(a) & (b) and (ii) of rule 4; and
 - (b) the offer is fully underwritten in the manner as provided in clauses (ii) and (iii) of rule 3:
- (iv) the offerer shall justify the amount of premium per share which shall be disclosed in the offer for sale document;
- (v) save as provided in clause (vi), the premium on public offering shall not exceed the amount of premium charged on divestment to foreign or local investors, if such divestment has been made within a period of six months preceding the opening of the public subscription and the names and addresses of such investors shall be disclosed in the offer for sale document;
- (vi) the shares divested to any person on account of preferential allocation, made within a period of six months preceding the opening of the public subscription, at a price lesser than the price at which shares are to be offered to the general public shall not be saleable or transferable for a period of six months from the date of close of the public subscription;

- (vii) the provisions of sub-clause (a) of clause (iii) 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.

Explanation: For the purpose of this rule the term, “Group of Persons”, means two or more persons who jointly or severally hold shares in the issuing company.

- (2) Shares of a company shall not be offered for sale to the general public unless;
 - (a) sponsors of such company undertakes to comply with the requirements of clause (iv) to (vi) of rule 3; and
 - (b) the company whose shares are offered has commenced commercial operation or commercial production and has audited accounts for the immediate preceding financial year.

10. Relaxation of rules.— (i) 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, or knowingly and willfully authorizes, abets or permits such failure, refusal or contravention, shall, in addition to any other liability under the Companies Ordinance 1984, 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.
