

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 (I) 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; and
- (iv) certain persons offering shares for sale to the public.

2. **Interpretation.-** In these rules the words and expressions used shall have the same meaning to them in the Companies Ordinance, 1984 (XLVII of 1984).

3. **Policy for issue of capital.-** A company which owns a loan-based project or an equity-based project and proposes to raise capital through public offer for the first time shall comply with the following conditions, namely:-

(i) *Loan-based projects:*

- (i) The size of capital to be issue shall be in accordance with financial plan approved by an institution financing the project.
 - (ii) The company's auditors shall certify that sponsors' subscription has been received in full and at least eight per cent thereof has been utilized in the project.
 - (iii) The stock exchange concerned shall verify that at least thirty percent of the plant and machinery has been installed and last consignment of plant and machinery, where required has been shipped to the company;
 - (iv) The sponsors shall, at all times retain at least twenty-five percent of the capital of the company.
- (ii) *Equity-based projects:*
- (i) The fixed capital expenditure shall be entirely financed by equity.
 - (ii) The project shall be appraised by a financial institution or a commercial bank or an investment bank.
 - (iii) The appraisal report shall be accompanied by a certificate from the company's auditors confirming that-
 - (a) the capital allocated to sponsors, foreign and local investors, if any, has been fully paid: and
 - (b) the land for the project has been required, letters of credit have been established and shipment schedule of plant and machinery has been finalized by the suppliers.
 - (iv) The issue shall be fully underwritten and the underwriters, not being the associated companies, shall include at least two financial institutions, including commercial banks and investment banks and the underwriters shall evaluate the project in their independent due diligence report.
 - (v) The sponsors shall retain at least twenty-five per cent of the capital of the company for a period of five years from the date of public subscription.

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

- (i) It shall have profitable operational record of at least one year;

- (ii) the premium on public offering shall not exceed the amount of premium charged on 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 the associated companies, shall include at least two financial institutions, including commercial banks and investments banks and the underwriters shall give full justification of the amount of premium in their independent due diligence report;
- (iv) the due diligence report of the underwriters shall form part of the material contracts;
- (v) full justification for premium shall be disclosed in the prospectus;
- (vi) the employees of the company getting preferential allocation, if any, shall be charged premium at the same rate as the public; and
- (vii) the shares allotted to any person on account of preferential allocation at par, shall not be salable for a period of two years from the date of public subscription, These person shall be issued jumbo certificates with markings “not salable for two years”. The particulars of each jumbo certificates will be furnished to the respective stock exchange. Companies while splitting jumbo certificates into marketable lots. after the prescribed period, shall inform the respective stock exchange.

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;
- (ii) the company while announcing right issue, shall clearly state the purpose of the right issue, benefits to the company, use of funds and financial projections for three years. The financial plan and 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 shall be communicated to the Authority and the respective stock exchange on the day of the decision;

- (iv) the company may charge premium on right shares up to the free reserves per shares as certified by the company's auditors and the certificates of the auditors shall be furnished to the Authority and the respective stock exchange alongwith intimation of the proposed right issue:

Provided that where a company proposes to charge premium on right issue above the free reserves per share it shall be required to fulfil the following requirements, namely:-

- (a) At least forty per cent of all the shareholders undertake to subscribe their portion of right issue; and
- (b) the remaining right issue shall be fully underwritten and the underwrites, not being associated companies, shall include at least two financial institutions including commercial banks and investment banks and the underwriters shall give full justification of the amount of premium in their independent due diligence reports;
- (v) right issue of a loss making company or a company whose market share price during the preceding six months has remained below per value shall be fully and firmly underwritten;
- (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 with the permission of the respective stock exchange under special circumstances; and
- (vii) if the announcement of bonus and right issue is made simultaneously, resolution of the board of directors shall specify whether the bonus shares covered by the announcement qualify for right entitlement.

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 free in 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----

- (i) reserves created as a result of re-valuation of fixed assets;
- (ii) goodwill reserve;
- (iii) depreciation reserve to the extent of ordinary depreciation including allowance for extra shifts admissible under the Income Tax Ordinance, 1979 (XXXI of 1979);

- (iv) development allowance reserve created under the provisions of the Income Tax Ordinance, 1979 (XXXI of 1979);
- (v) workers welfare fund;
- (vi) provisions for taxation to the extent of the deferred or current liability of the company; and
- (vii) capital redemption reserve.

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

- (i) The decision of the directors to issue bonus shares shall be communicated to the Authority and the respective stock exchange on the day of the decision and the intimation letter shall be accompanied by the auditor's certificate as specified in clause (iii);
- (ii) the free reserves of the company calculated in the manner as specified in rule 5 shall be sufficient to issue the bonus shares after retaining in the reserves twenty-five per cent of the capital as it will be increased by the proposed bonus shares;
- (iii) a certificate from the auditors shall be obtained to the effect that the free reserves and surpluses retained after the issue of the bonus shares will not be less than twenty-five per cent of the increased capital; and
- (iv) all contingent liabilities disclosed in the audited accounts and any such liability which may have been created subsequent to the audited accounts shall be deducted while calculating minimum residual reserves of twenty-five per cent.

7. **Offer for sale of shares by privatised 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 shall be determined by a consulting engineer registered with Pakistan Engineering Council and borne on the panel of at least two financial institutions as a valuer;

- (ii) the value of assets taken over shall be reduced by depreciation charged on consistent basis;
- (iii) the goodwill and other intangible assets shall be excluded from the consideration; and
- (iv) certificate from a practising Chartered Accountant shall be obtained to the effect that the above mentioned conditions have been complied with.

9. **Offer for sale of shares by certain persons.**--- A person 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) 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;
- (ii) no premium shall be charged unless the company has profitable operational record for at least one year;
- (iii) 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, shall include at least two financial institutions including commercial banks and investment banks and the underwriters shall give full justification of the amount of premium in their independent due diligence reports.
- (iv) due diligence reports of the underwriters shall form part of the material contracts: and
- (v) full justification for the premium shall be disclosed in the offer for sale.

10. **Relaxation of rules.**- Where the Authority is satisfied that it is not practicable to comply with any requirement of these rules in a particular case or class of cases, the Authority 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 wilfully authorises or permits such failure, refusal or contravention, shall, in addition to any other liability under the Ordinance, be also punishable with fine not exceeding two thousand rupees, and in case of continuing failure, refusal or contravention, to a further fine not exceeding one hundred rupees for every day after the first during which such contravention continues.