

STATUTORY NOTIFICATION (S.R.O)

Government of Pakistan

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

NOTIFICATION

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June 14, 1999 – Amendments to the Ordinance XLVII of 1984, Ordinance XXXI of 1980, and Act XLII of 1997

1. **Amendment of the Ordinance XLVII of 1984.**- The following further amendments shall be made in the Companies Ordinance, 1984 (XLVII of 1984), namely: -
 - i. In section 86, in sub-section (1), in the proviso for the full stop, at the end, a colon shall be substituted and thereafter the following new proviso shall be added, namely: - "Provided further that a public company may reserve a certain percentage of further issue for its employees under "Employees Stock Option Scheme" to be approved by the Commission in accordance with the rules made under this Ordinance."
 - ii. For section 90, the following shall be substituted, namely: -
" 90. Classes and kinds of share capital.- A company limited by shares may have different kinds of share capital and classes therein as provided by its memorandum and articles: Provided that different rights and privileges in relation to the different classes of shares may only be conferred in such manner as may be prescribed."
 - iii. In section 95, for sub-section
 - iv. the following shall be substituted, namely: - "(4) Nothing in this section shall prevent --
 - a. a company from redeeming any shares or any other redeemable security issued in accordance with the provisions of this Ordinance; and
 - b. a listed company from purchasing its own shares in accordance with the provisions of this Ordinance.". (4) After section 95 amended as aforesaid, the following new section shall be inserted, namely: -

"95A. Power of company to purchase its own shares.-

- i. Notwithstanding anything contained in this Ordinance or any other law for the time being in force or the memorandum and articles, a listed company may, subject to the provisions of this section and the rules framed by the Commission in this behalf, purchase its own shares (hereinafter in this section referred to as "purchase").

- ii. The purchase shall be authorized by a special resolution which shall indicate the maximum number of shares to be purchased; the maximum price at which the shares may be purchased; and the period within which the purchase is to be made.
- iii. The notice of the meeting in which the special resolution authorizing the purchase of shares is proposed to be moved, shall be accompanied by an explanatory statement containing all material facts including the following: -
 - a. justification for the purchase;
 - b. source of funding;
 - c. effect on the financial position of the company; and
 - d. nature and extent of the interest, if any, of every director, whether directly or indirectly.
- iv. The purchase shall always be in cash and shall be out of the distributable profits.
- v. Where shares are purchased by a company on premium, the amount of premium shall be charged to Share Premium Account of the company or in the absence of any balance therein, to the distributable profits of the company.
- vi. Where purchase is made at a price lower than the nominal value of shares, the difference shall be credited to the reserve created under sub-section (10).
- vii. The company shall have such debt equity and current ratios as may be prescribed.
- viii. The majority of the directors including the chief executive, shall at a meeting make a declaration of solvency verified by an affidavit to the effect that they have made a full inquiry into the affairs of the company, and that after having done so, they have formed the opinion that the company shall continue to operate as a going concern and that it is capable of meeting its liabilities on time during the period upto the end of the immediately succeeding financial year.
- ix. The purchase shall be made through a tender system and the mode of tender shall be decided by the company in general meeting through a special resolution.
- x. The shares purchased under this section shall not be resold and shall be cancelled forthwith. The amount of the company's paid up share capital shall be diminished by the nominal value of such shares accordingly. The amount by which the company's paid up share capital is thereby diminished on cancellation of the shares purchased shall, after accounting for the credit, if any, pursuant to sub-section (6) of this section, be transferred from the distributable profits to an account to be called "Capital Re-purchase Reserve Account".
- xi. The provisions of this Ordinance relating to the reduction of a company's share capital apply as if the Capital Re-purchase Reserve Account were paid-up share capital of the company, except that the reserve account may be applied by the company in paying up its unissued shares to be allotted to members of the company as fully paid bonus shares.
- xii. Where a company has purchased its own shares under this section, it shall maintain a register of shares so purchased and enter therein the following particulars, namely: -
 - a. numbers of shares purchased;
 - b. consideration paid for the shares purchased;
 - c. mode of purchase; and

- d. the date of cancellation of such shares.
- xiii. A return about the purchase of shares under this section containing such particulars relating to purchase as may be prescribed, along with the declaration of solvency made under sub-section (8), shall be filed with the Commission and the registrar within thirty days of the purchase.
- xiv. If a company makes default in compliance with the provisions of this section, the company shall be liable to a fine which may extend to one million rupees and any officer of the company who is knowingly and willfully in default shall also be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one million rupees, or with both."
- xv. After section 197, the following new section shall be inserted, namely:-

"197A. Prohibition regarding distribution of gifts.-

- xvi. Notwithstanding anything contained in this Ordinance, a company shall not distribute gifts in any form to its members in its meetings.
- xvii. If default is made in complying with this section, the company and every officer of the company who is a party to the default shall be liable to a fine not exceeding five hundred thousand rupees.

".Amendment of the Ordinance XXXI of 1980.- The following amendments shall be made in the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980), namely:-

- i. In section 2, in sub-section (1), clause
 - a. shall be re-lettered as clause (ab) and before that clause the following clause shall be inserted, namely:- (a) "Commission" means the Commission as defined in the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);".
- ii. In sections 19, 20 and 22, for the words "Federal Government", wherever occurring, the word "Commission" shall be substituted. (3)
In section 32, -
 - a. the existing section shall be re-numbered as sub-section (1) of that section; and
 - b. after sub-section (1), re-numbered as aforesaid, the following new sub-section shall be added, namely:-
"(2) Any person aggrieved by an order passed under sub-section (1) may, within sixty days of such order, prefer an appeal to the Commission."

Amendment of the Act XLII of 1997.- The following amendments shall be made in the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997), namely:-

- iii. In section 20, in sub-section (4), in clause (o), after the comma, occurring after the word "Ordinance", the words, commas, figures and brackets "the Securities and Exchange Ordinance, 1969 (XVII of 1969), the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980)." shall be inserted.
- iv. In section 20, after sub-section
- v. the following new sub-section shall be added, namely:- "

- vi. The Commission, and the Commissioner or officer to whom any of the functions or powers have been delegated under section 10 may, for the purposes of a proceeding or enquiry, require anyone-
 - a. to produce before, and to allow to be examined and kept by, an officer of the Commission specified in this behalf, any books, accounts or other documents in the custody or under the control of the person so required, being documents relating to any matter the examination of which may be considered necessary by the Commission or such Commissioner or officer; and
 - b. to furnish to an officer of the Commission specified in this behalf such information and documents in his possession relating to any matter as may be necessary for the purposes of the proceeding or enquiry."
- vii. In section 23, in sub-section
- viii. for clause (c), the following shall be substituted, namely:-
 - a. taxes, fees, penalties or other charges levied under this Act, the Ordinance, the Securities and Exchange Ordinance, 1969 (XVII of 1969), the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980), and under any other law for the time being administered by the Commission; and"