

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Islamabad, the 22nd November, 2011

NOTIFICATION

S.R.O. 1055 (I) /2011.- The following draft of certain further amendments in Voluntary Pension System Rules, 2005 which are proposed to be made by the Securities and Exchange Commission of Pakistan, with the approval of the Federal Government, in exercise of the powers conferred by sub-section (1) of section 282B of the Companies Ordinance, 1984 (XLVII of 1984), read with clause (b) of section 43 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997), is hereby published for eliciting public opinion thereon and notice is hereby given that comments, if any, received within fourteen days of the date of this notification will be taken into consideration by the Securities and Exchange Commission of Pakistan.

DRAFT AMENDMENTS

In the aforesaid Rules, -

- (1) in rule 2, in sub-rule (1),-
 - (a) after clause (b) the following new clauses shall be inserted, namely:-
 - “(ba) “approved occupational savings scheme” shall have the same meaning as defined in clause (3E) of section 2 of the Income Tax Ordinance, 2001 (XLIX of 2001);
 - (bb) “approved superannuation fund” shall have the same meaning as defined in clause (4) of section 2 of the Income Tax Ordinance, 2001 (XLIX of 2001);”;
 - (b) in clause (c), after the word “Companies” the brackets and words

“(Establishment and Regulation)” shall be inserted;

- (c) in clause (i), after the word “deed” the words “and any supplemental trust deed” shall be inserted;
- (d) in clause (m),-
 - (i) in sub-clause (iv), for the word “company”, occurring twice, the words ”pension fund” shall be substituted;
 - (iii) for sub-clause (vi) the following shall be substituted, namely:-

“(vi) mark-up accrued on any security in the portfolio shall be included as an asset of the pension fund if such accrued mark-up is not otherwise included in the valuation of the security;”;
 - (iv) in sub-clause (vii), the word “and”, at the end, shall be omitted;
 - (v) in sub-clause (viii),-
 - (i) the comma and word “, taxes” shall be omitted; and
 - (ii) for the words “ other than the paid-up capital of the company” the words “and taxes” shall be substituted; and
 - (vi) after sub-clause (viii), amended as aforesaid, the following new clauses shall be inserted, namely:-
 - “(ix) the remuneration accrued up to the date of computation payable to the Pension Fund Manager for providing management and other services shall be included as an expense;
 - (x) a security not listed or quoted on a stock exchange, other than debt security, shall be valued at investment price or its breakup value as per last audited accounts, whichever is lower; and
 - (xi) Government debt securities not listed on a stock exchange and traded in the interbank market shall be valued at the average rate quoted on a widely used electronic quotation system and such

average rate shall be based on the remaining tenor of the security;”;

- (e) after clause (m), amended as aforesaid, the following new clause shall be inserted, namely:-

“(ma) “offering document” means a document inviting contributions from eligible persons for a pension fund and includes all supplementary documents thereto or any document relating to an income payment plan;”;
and

- (f) in clause (o), after the word “person”, the words “who has contributed or” shall be inserted;

- (2) in rule 6,-

- (a) in sub-rule (1), after the comma, occurring for the first time, the words and figure “where the company has become ineligible to be registered in terms of rule 4 or” shall be inserted; and

- (b) in sub-rule (3), for the word “licence”, the word “registration” shall be substituted;

- (3) in rule 7,-

- (a) after the marginal note, the brackets and figure “(1)” shall be omitted;

- (b) in clause (e), for the word “three”, the word “four” shall be substituted;

- (c) for clause (j), the following shall be substituted, namely:-

“furnish to the Commission a copy of its annual report together with copies of the balance sheet, profit and loss account, the directors’ report and the auditors’ report within one month of its annual general meeting and shall furnish its half yearly report to the Commission within one month of close of its half year;”

(4) in rule 8,-

- (a) after the word “shall”, the words “on behalf of a pension fund” shall be inserted;
- (b) in clause (g), the word “and”, at the end, shall be omitted;
- (c) in clause (h), for the full stop at the end, the semi colon and word “; and” shall be substituted; and
- (d) after clause (h), amended as aforesaid, the following new clause shall be added, namely:-

“(i) enter into a short sale transaction in any security.”;

(5) in rule 9,-

- (a) for sub-rule (2), the following shall be substituted, namely:-

“(2) A pension fund shall be in the form of a unit trust scheme and such fund must be made up of an equity sub-fund, debt sub-fund, a money market sub-fund and may have other sub-funds, if allowed by the Commission.”;
- (b) in sub-rule (3), in clause (c), after the word “Commission”, at the end, the words “or a copy of challan evidencing payment of fee in favour of the Commission” shall be added;
- (c) after sub-rule (3), amended as aforesaid, the following new sub-rules shall be added, namely:-

“(4) The Commission on receipt of application under sub-rule (3) and after seeking such further information as it may deem necessary authorize the pension fund as specified in Form IV.

(5) The pension fund shall submit offering document containing information as specified in Schedule III for approval of the Commission.”;

(6) in rule 12, for the words “ and are not employed in any position entitling them to benefits under any approved occupational pension scheme”, the words, letters, comma and brackets “or a Computerized National Identity Card (CNIC) or National Identity Card for Overseas Pakistanis (NICOP),” shall be substituted;

(7) in rule 14,-

(a) in sub-rule (3),-

(i) the words “on any anniversary” shall be omitted; and

(ii) for the word “prescribed”, occurring twice, the word “specified” shall be substituted;

(b) in sub-rule (4),-

(i) for the words “may be specified”, the word “determined” shall be substituted; and

(ii) for the word “prescribed”, occurring twice, the word “specified” shall be substituted; and

(c) in sub-rule (5), for the word “prescribed”, the word “specified” shall be substituted;

(8) in rule 15,-

(a) for the marginal note, the following shall be substituted, namely:-

“15. Change of pension fund and Pension Fund Manager by participant.-”;

- (b) in sub-rule (1),-
- (i) for the word “participants”, the comma and words “, a participant” shall be substituted, and
 - (ii) after the word “Manager”, occurring for the second time, the words “or from one pension fund to another pension fund” shall be inserted;

- (c) after sub-rule (1), amended as aforesaid, the following new sub-rule (1A) shall be inserted, namely:-

“(1A) Subject to sub-rules (2) and (3), a participant shall be allowed to transfer his accumulated sum from an approved occupational savings scheme or an approved superannuation fund to a pension fund.”;

- (d) in sub-rule (2), after the word “Manager”, occurring for the second time, the words “or from one pension fund to another pension fund and from approved occupational savings scheme and approved superannuation fund to a pension fund” shall be inserted;

- (e) in sub-rule (3), for the word “prescribed”, the word “specified” shall be substituted; and

- (f) for sub-rule (4) , the following shall be substituted, namely:-

“(4) The transfer of individual pension account from one Pension Fund Manager to another Pension Fund Manager or from one pension fund to another pension fund shall only take place once in a financial year and the notice for the change of the Pension Fund Manager or pension fund, specifying the name of the new Pension Fund Manager or the pension fund shall be sent by the participant at least twenty one days before the effective date of the proposed change.”;

- (9) in rule 18,-

- (a) in sub-rule (1),-

- (i) for the word “interest”, the word “mark-up” shall be substituted; and

(ii) for clause (a), the following shall be substituted, namely:-

“to withdraw up to fifty per cent or such percentage of the amount from his individual pension account as cash which is permissible under the Income Tax Ordinance, 2001 (XLIX of 2001);” and

(b) in sub-rule (2),-

(i) for the words “no other option except ”, the word “option” shall be substituted; and

(ii) after the word “choice”, at the end, the words “or buy an income payment plan for another term or withdraw the amount from his account” shall be added;

(10) in rule 20, in sub-rule (2), in clause (b), after the word “account”, the words “or income payment plan account” shall be inserted;

(11) in rule 23, in sub-rule (2), for the proviso the following shall be substituted, namely:-

“Provided that the amount or method of calculation of such fees and charges shall be transparent and clearly disclosed in the constitutive document and offering document of the pension fund.”;

(12) in rule 24,-

(a) for sub-rule (2), the following shall be substituted, namely:-

“(2) The pension fund shall be divided into sub-funds to be called the equity sub-fund, debt sub-fund, the money market sub-fund and such other sub-funds as may be specified by the Commission.”;

(b) in sub-rule (3), for the word “determined”, the word “specified” shall be substituted;

(13) rule 26 shall be omitted;

(14) in rule 27, in sub-rule (1), after the word “shall”, the words “take exposure in any form or invest in debt or equity securities of connected persons or” shall be inserted;

(15) in rule 30,-

(a) in clause (b), after the brackets and letter “(a)”, at the end, the words and symbol “having minimum A+ or equivalent rating from a rating company registered with the Commission;” shall be added;

(b) in clause (d), for the full stop, at the end, a colon shall be substituted; and

(c) after clause (d), amended as aforesaid, the following proviso shall be added, namely:-

“Provided that the trustee has experience of acting as trustee of mutual funds or pension funds for at least three years.”;

(16) in rule 31,-

(a) for clause (b), the following shall be substituted, namely:-

“be liable for any loss caused due to its willful act or omission or that of its agent or delegate in relation to custody of assets or any investment forming part of the property of the pension fund;”;

(b) in clause (h), the word “and”, at the end, shall be omitted;

(c) in clause (i) for the full stop, at the end, a semicolon shall be substituted;

(d) after clause (i), amended as aforesaid, the following new clauses shall be added, namely:-

“(j) ensure that the Pension Fund Manager has specified a criteria in writing to provide for a diverse panel of brokers at the time of offering of a pension fund or for any subsequent change;

(k) ensure that the Pension Fund Manager has been diligent in appointing brokers to avoid undue concentration of business , that is, more than ten per cent of the pension fund’s brokerage commission in any one financial year with any broker;

(l) immediately inform the Commission if any action of the Pension Fund Manager contravenes any provision of the Ordinance, these

rules, constitutive document, offering document, guidelines, codes, circulars, directives or any other applicable laws; and

- (m) comply with the directions of the Commission given in the interest of the participants.”;

(17) in rule 40,-

- (a) for sub-rule (1), the following shall be substituted, namely:-

“(1) The performance of all sub-funds managed by all Pension Fund Managers shall be compared with the performance benchmarks as specified by the Commission from time to time.”;

- (b) sub-rule (2) shall be omitted;

- (c) in sub-rule (3),-

- (i) for the words, brackets and figure, “benchmark referred to in sub-rule (2)”, the word “benchmarks” shall be substituted; and

- (ii) after the word “Commission” the words “in respect of the Pension Fund Manager where the investment return in the sub-funds during any particular year is below the specified benchmark” shall be omitted; and

- (d) after the sub-rule (3), amended as aforesaid, the following new sub-rule shall be added, namely:-

“(4) At least past five years data or data since the launch of the fund will be used for such comparison with specified performance benchmarks.”;

(18) in rule 41,-

- (a) in sub-rule (1),-

- (i) for the full stop, at the end, a colon shall be substituted; and

- (ii) after sub-rule (1), amended as aforesaid, the following proviso shall be added, namely:-

“Provided that Islamic funds and conventional funds shall be compared separately.”; and

- (b) for sub-rule (2), the following shall be substituted, namely:-

“(2) The comparative statements shall contain performance of pension funds including fee structure, rate of return and any other material information relating to the past five years or since inception whichever is later.”;

(19) after Form III, the following new Form shall be added, namely:-

“FORM IV

[see rule 9(4)]

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Islamabad, the _____

Authorization No. _____

AUTHORIZATION OF PENSION FUND

The Securities and Exchange Commission of Pakistan, having considered the application for authorization of the **....., and being satisfied that the said **..... has provided information as specified under Schedule III, in exercise of the powers conferred by sub-rule (1) of rule 9 of the Voluntary Pension System Rules, 2005, hereby grants authorization to **..... subject to the conditions stated herein below or as may be prescribed or imposed hereafter.

Signature of the Authorized Officer

** Name of the pension fund.”; and

(20) after Schedule II, the following new Schedule shall be added, namely:-

“SCHEDULE III

[see rule 9(5)]

CONTENTS OF THE OFFERING DOCUMENT OF THE PENSION FUND

1. Introduction of the Pension Fund
2. Regulatory approval and consent i.e. Registration of the Pension Fund Manager, authorization of the pension fund, appointment of the trustee and the registration of the trust deed, approval of the offering document and date of start of the public offer.

3. Filing of the offering document
4. Constitution of the pension fund.
Name, registered address and place and date of authorization of the pension fund.
5. Operators and principals.
The names and registered address of the following parties, where applicable:
 - (a) the directors of the company registered as Pension Fund Manager;
 - (b) the trustee;
 - (c) foreign promoters, if any;
 - (d) the distribution company, if any;
 - (e) the auditor;
 - (f) the legal adviser; and
 - (g) the investment advisor, if any.
6. Characteristics of pension fund.
The following shall be characteristics of pension fund; namely:-
 - (i) eligibility;
 - (ii) application procedures;
 - (iii) contribution procedures and minimum contribution, if any;
 - (iv) individual pension account;
 - (v) change of pension fund manager;
 - (vi) change of pension fund
 - (vii) register of the participants;
 - (viii) retirement age;
 - (ix) benefits on retirement;
 - (x) withdrawal of funds before retirement;
 - (xi) benefits on death before retirement;
 - (xii) instructions from the participants;
 - (xiii) the method of determining net asset value of the pension fund;
 - (xiv) frequency of valuation of the assets and dealings etc;
 - (xv) unit pricing and the circumstances under which it can change;
 - (xvi) the mode of announcement of net asset value and unit price;
 - (xvii) redemption of units on change of pension fund manager or withdrawal;
 - (xviii) the maximum interval between the request for redemption of units and the payment of the proceeds; and
 - (xix) withholding tax and tax penalty.
7. Fees and charges.
The following must be stated, namely: -
 - (a) the maximum upfront fee payable to the Pension Fund Manager out of the contributions;
 - (b) the maximum fee payable to the Pension Fund Manager as annual management fee, expressed as a percentage of the net asset value of the pension fund;

- (c) the level and basis of all other costs, fees and charges payable by a participant.
 - (d) remuneration payable to trustee and investment advisor; and
 - (e) the level and basis of all other costs, fees and charges, etc., payable out of the pension fund.
8. Investment Policy and Restrictions.
- (a) Investment policy.
 - (b) Investment restrictions.
 - (c) Participant's rights in terms of investment choice.
 - (d) Risk disclosure.
 - (e) Disclaimer.
9. Change of Pension Fund Manager.-
The procedure and timing for transfer of the individual pension account to another Pension Fund Manager.
10. Distribution restriction policy.-
The distribution restriction policy shall indicate the fact that distribution of dividend shall not be allowed under the voluntary pension system.
11. A summary of the circumstances in which dealing in pension fund may be deferred or suspended.
12. It must be stated that no money should be paid to any intermediary except the Pension Fund Manager or his authorized representative as prescribed
13. Distribution restriction policy.-
The distribution restriction policy shall indicate the fact that distribution of dividend shall not be allowed under the voluntary pension system.
14. Taxation.-
- (a) Detail of tax incentives (tax credit) available to the participants on contributions to the pension fund under the Income Tax Ordinance, 2001, with comprehensive illustrations.
 - (b) Detail of tax exemptions on investment income of the pension fund under the Income Tax Ordinance, 2001.
 - (c) Detail of the tax penalty (withholding tax) in case of early withdrawal or withdrawal in excess of the allowable limit as per Income Tax Ordinance, 2001.
 - (d) Details of tax treatment in case of withdrawal after retirement and purchase of annuities or income payment plan.
15. Reports and accounts.-
- (a) Annual accounting period of the pension fund.

- (b) individual pension account statements/contribution receipts to be issued to the participants and details to be stated therein.
 - (c) periodic reports to be sent to the participant and the Commission and the particulars of such reports.
16. Service to the participants
 - (a) Availability of forms.
 - (b) Register of the participants.
 - (c) Information in the register of the participants.
 - (d) Account statement.
 17. Financial Information
 18. Warnings.
 19. Complaints
 20. Transactions with connected persons.-
This must be stated, in accordance with the Voluntary Pension System Rules, 2005;
 21. Termination of pension fund.-
A summary of the circumstances in which, the pension fund can be terminated and consequences thereof, in accordance with the Voluntary Pension System Rules, 2005;
 22. Modification of the constitutive documents.-
A statement of the means by which modifications to the constitutive documents can be effected, if any.
 23. Definitions
 24. Glossary”.
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[F.No.SEC/SCD/PW/2001/145]

(Abdul Rehman Qureshi)
Advisor / Secretary