

THE GAZETTE OF PAKISTAN

EXTRAORDINARY

PUBLISHED BY AUTHORITY

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Islamabad, 16 January, 2012

NOTIFICATION

S. R. O. 27(I)/2012. - In exercise of powers conferred by clause (b) of sub-section (2A) of section 208 read with section 506A of the Companies Ordinance, 1984, (XLVII of 1984) and having being previously published in the official Gazette vide Notification No. S.R.O.82(1)/2010 dated February 9, 2011 as required by sub-section (1) of section 506A of the said Ordinance XLVII of 1984 the Securities and Exchange Commission of Pakistan hereby makes the following Regulations, namely:-

CHAPTER I

PRELIMINARY

1. Short title, commencement and application. – (1) These Regulations shall be called the Companies (Investment in Associated Companies or Associated Undertakings) Regulations, 2012.

(2) These Regulations shall come into force at once.

(3) These Regulations shall apply to all companies seeking to invest in their associated companies or associated undertakings except and to the extent they are specifically exempted by the Commission under clause (a) of sub-section (2A) of section 208 of the Companies Ordinance, 1984, (XLVII of 1984).

2. Definitions.– (1) In these Regulations, unless there is anything repugnant in the subject or context, –

- (a) “Equity Investment” includes investment by way of subscription of shares directly from the Company and/or acquisition of shares from a person or through stock market;
- (b) “Loans and Advances” include,-
 - (i) Loan or advance given by the Company;
 - (ii) a guarantee, indemnity or any other financial engagement which a company may give, issue or undertake on behalf of a borrower; and
 - (iii) transfer of liabilities from associated company or associated undertaking;
- (c) “Ordinance” means the Companies Ordinance, 1984, (XLVII of 1984).

(2) Words and expressions used but not defined in these Regulations shall, unless these is anything repugnant in the subject or context, have the same meaning assigned to them in the Companies Ordinance, 1984, the Securities and Exchange Ordinance, 1969 (XVII of 1969) or the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997).

CHAPTER II

NOTICE OF MEETING AND INFORMATION TO MEMBERS

3. Information to be disclosed to members.– (1) A company shall, while issuing notice of its general meeting where a special business related to investments in any of its associated companies or associated undertakings is to be transacted under section 208 of the Ordinance, annex a statement pursuant to clause (b) of sub-section (1) of section 160 of the Ordinance, setting out, among other, the following information, namely,-

(a) In case of investment in securities of its associated companies or associated undertakings,-

- (i) name of the associated company or associated undertaking along with criteria based on which the associated relationship is established;
- (ii) purpose, benefits and period of investment;
- (iii) maximum amount of investment;
- (iv) maximum price at which securities will be acquired;
- (v) maximum number of securities to be acquired;
- (vi) number of securities and percentage thereof held before and after the proposed investment;
- (vii) in case of investment in listed securities, average of the preceding twelve weekly average price of the security intended to be acquired;
- (viii) in case of investment in unlisted securities, fair market value of such securities determined in terms of regulation 6(1);
- (ix) break-up value of securities intended to be acquired on the basis of the latest audited financial statements;
- (x) earning per share of the associated company or associated undertaking for the last three years;
- (xi) sources of fund from which securities will be acquired;

- (xii) where the securities are intended to be acquired using borrowed funds,-
 - (I) justification for investment through borrowings; and
 - (II) detail of guarantees and assets pledged for obtaining such funds;
- (xiii) salient features of the agreement(s), if any, entered into with its associated company or associated undertaking with regards to the proposed investment;
- (xiv) direct or indirect interest of directors, sponsors, majority shareholders and their relatives, if any, in the associated company or associated undertaking or the transaction under consideration;
- (xv) any other important details necessary for the members to understand the transaction; and
- (xvi) In case of investment in securities of a project of an associated company or associated undertaking that has not commenced operations, in addition to the information referred to above, the following further information, is required, namely,-
 - (I) description of the project and its history since conceptualization;
 - (II) starting and expected dated of completion of work;
 - (III) time by which such project shall become commercially operational; and
 - (IV) expected time by which the project shall start paying return on investment;

(b) In case of loans and advances,-

- (i) name of the associated company or associated undertaking along with criteria based on which the associated relationship is established;
- (ii) amount of loans or advances;

- (iii) purpose of loans or advances and benefits likely to accrue to the investing company and its members from such loans or advances;
- (iv) in case any loan has already been granted to the said associated company or associated undertaking, the complete details thereof;
- (v) financial position, including main items of balance sheet and profit and loss account of the associated company or associated undertaking on the basis of its latest financial statements;
- (vi) average borrowing cost of the investing company or in case of absence of borrowing the Karachi Inter Bank Offered Rate for the relevant period;
- (vii) rate of interest, mark up, profit, fees or commission etc. to be charged;
- (viii) sources of funds from where loans or advances will be given;
- (ix) where loans or advances are being granted using borrowed funds,-
 - (I) justification for granting loan or advance out of borrowed funds;
 - (II) detail of guarantees / assets pledged for obtaining such funds, if any; and
 - (III) repayment schedules of borrowing of the investing company;
- (x) particulars of collateral security to be obtained against loan to the borrowing company or undertaking, if any;
- (xi) if the loans or advances carry conversion feature i.e. it is convertible into securities, this fact along with complete detail including conversion formula, circumstances in which the conversion may take place and the time when the conversion may be exercisable;
- (xii) repayment schedule and terms of loans or advances to be given to the investee company;

- (xiii) salient feature of all agreements entered or to be entered with its associated company or associated undertaking with regards to proposed investment;
- (xiv) direct or indirect interest of directors, sponsors, majority shareholders and their relatives, if any, in the associated company or associated undertaking or the transaction under consideration;
- (xv) any other important details necessary for the members to understand the transaction; and
- (xvi) in case of investment in a project of an associated company or associated undertaking that has not commenced operations, in addition to the information referred to above, the following further information is required, namely,-

- (I) a description of the project and its history since conceptualization;
- (II) starting date and expected date of completion;
- (III) time by which such project shall become commercially operational;
- (IV) expected return on total capital employed in the project;
and
- (V) funds invested or to be invested by the promoters distinguishing between cash and non-cash amounts;

(c) In case of investment through transfer of liabilities from associated company or associated undertaking,-

- (i) name of the associated company or associated undertaking along with criteria based on which the associated relationship is established;

- (ii) description of liabilities to be transferred and consideration to be received by the company for assuming liabilities of associated company/undertaking;
- (iii) book value of liabilities to be transferred;
- (iv) purpose of such transfer of liabilities;
- (v) period, if any, for which such transfer of liabilities is to be made;
- (vi) salient features of all agreements entered into with the associated company or associated undertaking or with the financial institution(s) with regards to proposed transfer of liabilities;
- (vii) direct or indirect interest of directors, sponsors, majority shareholders and their relatives in the associated company or associated undertaking or the transaction under consideration; and
- (viii) any other important details necessary for the members to understand the transaction.

(2) A listed company shall simultaneously dispatch a copy of aforesaid notice and the statement of material facts to the head office of the Securities and Exchange Commission of Pakistan, through fax/email and courier service.

(3) The directors of the investing company while presenting the special resolution for making investment in its associated company or associated undertaking shall submit an undertaking to the members of the investing company that they have carried out necessary due diligence for the proposed investment.

(4) The duly signed recommendations of the due diligence report referred to in sub-regulation (3) shall be made available to the members for inspection in the general meeting called for approval of the special resolution.

4. Other information to be disclosed to the members.- (1) If the associated company or associated undertaking in which the investment is being made or any of its sponsors

or directors is also a member of the investing company, the information about interest of the associated company or associated undertaking and its sponsors and directors in the investing company shall be disclosed in the notice of general meeting called for seeking members' approval pursuant to section 208 of the Ordinance.

(2) In case any decision to make investment under the authority of a resolution passed pursuant to provisions of section 208 of the Ordinance is not implemented either fully or partially till the holding of subsequent general meeting(s), the status of the decision must be explained to the members through a statement having the following details namely ,-

- a) total investment approved;
- b) amount of investment made to date;
- c) reasons for not having made complete investment so far where resolution required it to be implemented in specified time; and
- d) material change in financial statements of associated company or associated undertaking since date of the resolution passed for approval of investment in such company.

5. Audited Financial Statements.- Duly audited latest annual financial statements of the associated company or associated undertaking along with the latest reviewed financial statements, if any, shall be made available for inspection of the members in the general meeting called for considering investment decisions pursuant to section 208 of the Ordinance.

CHAPTER III
RESTRICTIONS & CONDITIONS

6. Conditions applicable to a company making investment in securities of its associated companies or associated undertakings.- (1) In case of investment in unlisted equity securities of an associated company or associated undertaking, the fair value for such securities shall be determined based on generally accepted valuation techniques and latest audited financial statements of the associated company or associated undertaking, by,-

(i) a chartered accountant firm, which must have been given a satisfactory rating under the Quality Control Review Program of Institute of Chartered Accountants of Pakistan; or

(ii) a Non-banking finance company licensed by the Commission to carry out the business of investment finance services which has been assigned a minimum rating of “A+” or equivalent by a credit rating company registered with the Commission, and has been in operation for at least five years.

(2) In case the price to be paid for unlisted equity securities of an associated company or associated undertaking is different from the fair value as determined in terms of sub-regulation (1) above, an explanation along with justification, reasons and basis of determination of price shall be disclosed to the members.

(3) Where approval is granted by the members for investment in securities of an associated company or associated undertaking up to a certain limit, such approved limit shall stand exhausted upon the investment reaching that limit on a cumulative basis, whether such investment is made as a whole or on a piecemeal basis and such approval shall not be valid for any recurring investment even after divestment of the securities acquired by it in pursuance of the aforesaid approval.

(4) Share deposit money shall be transferred for equity investment only after announcement of the offer for issue of shares by the associated company or associated undertaking and in case shares are not issued within ninety days of transfer of share deposit money such share deposit money shall be treated as loan and interest/mark up thereon shall be charged from the date of transfer of funds in accordance with the provisions of section 208 of the Ordinance.

7. Conditions & restrictions applicable to companies making investment by way of loans and advances in its associated companies or associated undertakings.- A company intending to make investment in its associated company or associated undertaking shall comply with the following conditions and restrictions, namely-

(a) If the investing company has no borrowings, the rate of return on loans / advances shall not be less than Karachi Inter Bank Offered Rate for the relevant period:

Provided that where a company uses Shariah compliant mode of financing, the transactions shall be structured in such a way that the rate of return on such facilities is not less than that earned by Islamic Financial Institutions in Pakistan on similar facilities during the corresponding time period;

(b) In case of unfunded facilities (for example a guarantee, letter of indemnity, etc.) the rate of return shall be determined based on the rate of interest, mark up, profit, fees or commission etc., as the case may be, charged by commercial banks or Islamic Financial Institutions on similar unfunded facilities;

(c) Interest, mark up, profit, fees or commission etc., as the case may be, shall be recovered periodically by the investing company in line with the standard terms normally applied by the commercial banks or the Islamic Financial Institutions on similar facilities extended to the borrowers;

(d) The company shall not invest in its associated company or associated undertaking by way of loans or advances except in accordance with an agreement in writing and such agreement shall *inter-alia* include the terms and conditions specifying the nature, purpose, period of the loan, rate of interest, mark up, profit, fees or commission, repayment schedule for principal and interest, mark up, profit, fees or commission, penalty clauses in case of default or late repayments and security for the loan in accordance with the approval of the members in the general meeting; and

(e) The company shall not extend to its associated company or associated undertaking any loan or advance as running finance, revolving line of credit or any other similar facility for a period beyond one year provided that members may approve renewal of such loan or advance.

8. Other conditions and restriction.- (1) Unless otherwise specifically authorised by the members in the general meeting the special resolution authorising investment in associated companies or associated undertakings shall be valid for a period of twelve months and shall stand lapsed after such period; and

(2) A company shall not make any further investment in its associated company or associated undertaking in which previous investment has been written off by the investing company, or which is already indebted to the company and such associated company or associated undertaking has failed to repay the loan or advance including interest, mark up, profit, fees or commission etc. thereon as per schedule or has failed to comply with any of the terms and conditions of the agreement in this regard, unless such loan has been rescheduled under approval of special resolution of the members of the investing company.

CHAPTER IV
MAINTENANCE OF RECORD

9. Register of Investments in associated companies or associated undertaking.-

(1) In addition to any records maintained by an investing company under the provisions of any law, rules or regulations, such company shall also maintain at all times at its registered office, a register showing separately investment in each associated company or associated undertaking including but not limited to investment in securities, loans and advances, guarantee or security given, investment through transfer of liabilities etc., containing at least the following information,-

- (a) the name of the associated company or associated undertaking;
- (b) amount, terms and purpose of the investment, loan, security or guarantee;
- (c) date on which the investment has been made;
- (d) the date on which the guarantee has been given or security has been provided in connection with a loan; and
- (e) particulars relating to repayment of principal, mark up, other monetary receipts, disposal of investment, redemptions etc.

(2) The particulars of all the investments referred to in sub-regulation (1) shall be entered chronologically in the register immediately after making of such investment or effectuating any subsequent transactions relating to such investments, as the case may be.

(3) The provisions applicable to inspection of register under the Ordinance shall apply to the inspection of the register maintained under sub-regulation (1).

10. Repeal.- The notification S.R.O 865(I)/2000, is hereby repealed.