

GOVERNMENT OF PAKISTAN
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

-:-:-

Islamabad, the 7th March, 2018

NOTIFICATION

S.R.O. 306(I)/2018.— The following draft Securities and Exchange Commission of Pakistan (Search and Seizure) Rules, 2018 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 section 39 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997) read with sub-section (1) of section 31 and clause (b) of section 43 thereof, are hereby published for information of all persons likely to be affected thereby and as required by sub-section (2) of the said section 39 notice is hereby given that comments, objections and suggestion, if any, may for consideration be sent within thirty days of the date of publication of this Notification which received, if any, before expiry of the said period shall be taken into consideration, namely:-

CHAPTER I
PRELIMINARY

1. Short title and commencement.- (1) These rules shall be called the Securities and Exchange Commission of Pakistan (Search and Seizure) Rules, 2018.

(2) They shall come into force at once.

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

- (a) “Act” means the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);
- (b) “digital evidence” includes information or data of value to an investigation that is stored on, received or transmitted by an electronic device;
- (c) “investigating officer” means any employee or one or more other persons for the purpose of investigation authorized by the Commission under the Act or any administered legislation and also includes investigation team of the said employees or one or more other persons;
- (d) “personal information” means any information that relates to a natural person, whose identity is apparent or can reasonably be ascertained from the information;
- (e) “electronic device” includes but is not limited to devices having the capacity to store, record, or transmit text, image, video or audio data including hard drives, thumb drives, memory cards, pagers, computers, tablets, laptops, cellular and smart phones, CD and DVD, cassette players and recorders, portable digital assistants (PDAs), digital cameras, answering machines, audio devices, watches with input capability,

- reminder recorders and such other modern devices having the storage capacity;
- (f) "report" means investigation report required under section 29 of the Act; and
 - (g) "schedule" means schedule appended to these rules.

(2) Words and expressions used but not defined in these rules shall have the same meaning as have been assigned to them in the Act or any administered legislation.

CHAPTER II PROCEDURE RELATING TO SEARCH AND SEIZURE

3. Procedure of search and seizure.- (1) Subject to sections 30 and 31 of the Act, the investigating officer shall prepare an inventory of all the documents, digital evidence, electronic devices, objects, articles, material or things seized in the course of search and clearly note the places in which they are found.

(2) The investigating officer shall allow any occupant of the place to be present during search under such restriction as deemed appropriate for conducting the search.

(3) The investigating officer shall prepare seizure memo in the form as provided in the Schedule at the spot and must carry with him all necessary tools or things required for preparing seizure memo at the spot:

Provided that where there is no provision of electricity, computer, printer at the spot, the investigating officer shall prepare handwritten seizure memo.

(4) The investigating officer shall maintain a diary of proceedings, setting forth details of day to day proceedings in the investigation and the investigating officer shall record concisely and clearly all steps taken by the team during the course of investigation. It shall also include description of all documents seized and all statements recorded.

(5) Diary of proceedings referred to in sub-rule (4) shall not be part of prosecution record and shall be used for assistance in the investigation and perusal of the Commission and the court and no person shall be entitled to call for such diaries, nor shall he or they be entitled to inspect such diaries.

(6) The investigating officer shall meet all requirements of the Act and any administered legislation under which investigation is authorized.

4. Seizure between sunrise and sunset.- Attachment by seizure shall be made after sunrise and before sunset and not otherwise.

5. Witness.- (1) The investigating officer shall search any place or building in presence of two witnesses who may be inhabitants, officials, officers, servants, employees or keeper of the locality, office, building or place including any regulated person:

Provided that in absence of any local inhabitant, official, servant or employee, the investigation team may associate other officers, officials or employees of the Commission, not being member of the investigation team by giving brief reasoning in the report and duly recording the same in the diary of proceedings:

Provided that associating local inhabitant in search shall not be required where it is made as a result of information given by the accused or on secret information requiring immediate action or if the place or building searched is a deserted area or search is carried out in odd hours.

(2) The investigating officer, under the Act or any administered legislation, shall also record separate statements of the witnesses.

6. Search of places and buildings by force.- (1) After obtaining approval from the Commission under rule 3, the investigating officer shall, prior to carrying out search of any building, place, vessel and vehicle and other enclosed places, inform the local police station having jurisdiction or in any other manner as provided for under rules and instructions made by the Police department from time to time.

(2) The investigating officer shall record entry of his arrival in the “daily diary or *Rozenamcha*” of the relevant police station having jurisdiction.

(3) Notwithstanding anything contained in any other provision of these rules, the investigating officer may, at any time when the circumstances so warrant, call Police force or any other administrative agency for assistance in accordance with sub-section (4) of section 29 of the Act:

Provided that while asking for assistance from the concerned police officer under these rules, it shall not always be necessary, if circumstances so warrant, to give exact location of the place or building to be searched for operational reasons.

(4) Where the investigating officer has apprehension that any person or occupants of any building, place, vessel and vehicle to be searched may create hindrance, resist search or such document or thing is not known to be in the possession of any person or where general search is required for the purposes of any proceedings, under these rules or any person will not produce any document or thing as required by the investigating officer in any proceedings or investigation under these rules, a search-warrants from the concerned Magistrate may be obtained:

Provided that the investigating officer after obtaining warrant under sub-rule (4) may conduct search of such person and enter any building, place, vessel or vehicle and seize any property, material, document, digital evidence, electronic device or thing required or associated with the commission of any offence under the Act or administered legislation.

(5) Subject to sub-rule (4) the investigating officer may break open any inner or other door or window of any building, place, vessel or vehicle etc. and enter the same in order to seize any movable property if the investigating officer has reasonable grounds to believe that such

building contains movable property liable to seizure and the investigating officer has notified his authority and purpose.

(6) The investigating officer may require any person who is the owner or has the immediate possession or control of any box, locker, safe, *almirah* or any other receptacle situated in such house, building, office, place, vessel or vehicle etc. to open the same and allow access to inspect or examine its contents and, where the keys thereof are not available or where such person fails to comply with any such requirement, may cause any action to be taken including the breaking open of such box, locker, safe, *almirah* or other receptacle which the investigating officer may deem necessary for carrying out all or any of the purposes of the Act or any administered legislation.

(7) The investigating officer may require any person who is the owner or has the immediate possession or control of such house, building, office, place, vessel or vehicle pending the commencement of the search not to remove from such house, building, office, place, vessel or vehicle any article or other thing.

(8) All necessary precautions shall be taken by the investigating officer not to damage or destroy any article, building, vessel or vehicle or other things beyond what is absolutely necessary to enter building or conduct search and the use of force should be limited and restrictive.

7. Search of persons.- Any person who has got out of or is about to get into or is in any house, building, office, place, vessel or vehicle etc. authorized to be searched if the investigating officer has reason to suspect that such person has secreted about his person any such books of account or other documents, may be searched and if such person is a female, the search shall be made by another female officer so authorized with strict regard to decency.

8. Search of electronic devices.- (1) The investigating officer, during the course of investigation, may-

- (a) use any reasonable measures to access an electronic device;
- (b) secure the scene and not let anyone touch except authorized personnel to handle all electronic devices containing digital evidences;
- (c) in case of a computer, make photograph of computer front and back as well as cords and connected devices, as found and also make photograph the surrounding area prior to moving any evidence;
- (d) if the electronic device is in switched on position and something displayed on the screen, take photograph of the screen, note the date and time on the screen and description of all the open files on the electronic device;
- (e) in case it is necessary for the purpose of investigation, operate any electronic device, at the place which is being searched, himself or seek assistance of a computer specialist or direct any person familiar with operating the electronic device, accompanying investigating officer; and

- (f) require any person to facilitate and provide access to the information held in any such electronic device including, but not limited to the, following information-
 - (i) to give to the investigating officer any password necessary to operate the electronic device; or
 - (ii) otherwise to enable the investigating officer to examine the information accessible by the electronic device in a form in which the information is visible and legible.
- (g) immediately shut down or switch off the electronic device if he reasonably believes that the accused or any other person has employed any device or software to destroy evidence.

(2) The investigating officer shall have the power of inspection of the documents or electronic devices found in any place, house, building, office, vessel and seize any document, books of account or other documents, found as a result of such search and get the signature of such persons on the seizure memo:

Provided that the investigating officer may, where it is not practicable to seize any books of account, documents or electronic device, serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of the investigating officer and such person shall thereupon take such steps as may be necessary for ensuring compliance with the order.

9. Seizure memo.- (1) An investigating officer shall, in presence of the person from whom or whose premises, vessel or vehicle etc. the documents, digital evidence or electronic devices were seized, if such person is available, prepare a seizure memo in the form as provided in Schedule duly signed by two witnesses, containing a list of all documents seized or copied in the course of such search and of the places in which they were respectively found and verify the inventory of any such documents seized:

Provided that in case where the electronic information stored in electronic device is to be searched and seized, the information to be searched must be identified wherever possible and shall be obtained in the form of printed or electronic copies or where feasible by way of a screen shot:

Provided further that, if it is unfeasible to obtain electronic information in the form of printed or electronic copies or by way of screen shot or if the purpose of the seizure cannot be accomplished by obtaining the specified information in copies, electronic devices themselves shall be seized by the investigating officer and the description of the electronic devices that were seized shall be entered in the seizure memo.

10. Power to place identification mark.-The investigating officer shall have the power to place mark of identification on any books of account or other documents:

Provided that any person from whose possession or control the document, digital evidence or electronic device is seized shall be permitted to put his own identification mark on the documents, digital evidence or electronic device seized:

Provided further that the description of such identification mark shall be recorded in the seizure memo.

11. Power to make copy.- The investigating officer shall have the power to make or cause to be made extracts or copy of documents, digital evidence or any books of account.

CHAPTER III RIGHTS AND OBLIGATIONS OF INVESTIGATING OFFICER AND PERSONS BEING SEARCHED

12. Rights of persons under search and persons in charge.- (1) The occupant of the house, building, office, place, vessel or vehicle searched, including the person in charge of such vessel, vehicle etc. shall have the right -

- (a) to see the relevant authorization of investigating officer;
- (c) to be present during the search and seizure;
- (d) to have a copy of any statement recorded during search and seizure:

(2) In case of an employee of a regulated person, making statement under sub-rule (1) for the fear of reprisal or undue influence by his employer or any other person request at the time of making statement or if the investigating officer suspects that provision of copy to such person shall jeopardize investigation in any way, he may withhold such statement.

13. Obligations of persons under search and persons in charge.- (1) Any person in charge of or who is present in any house, building, office, place authorized to be searched shall, on demand by the investigating officer to execute warrant of authority and on production of the authority, identify any person as may be required by the investigating officer.

(2) Any person in charge of or who is in control of any vessel or vehicle etc. authorized to be searched shall, on demand by the investigating officer, locate and identify such vessel or vehicle etc.

(3) Any person in charge of or in control of any house, building, office, place, vessel or vehicle etc. authorized to be searched shall, on demand by the investigating officer to execute order under rule 3 and on production of such authority, allow him free ingress thereto and afford all reasonable facilities for a search therein.

(4) Any person in charge of the business or person in charge of electronic devices shall be bound to disclose the password and such other information as may be asked for by the investigating officer.

(5) Any person who is found to be in possession or control of any document, books of account or other documents, maintained in the form of electronic record or digital evidence, shall provide to the investigating officer the necessary facility to inspect such books of account or other documents.

(6) Any person who is the owner or has the immediate possession or control of any box, locker, safe, *almirah* or any other receptacle situate in such building, place, vessel or vehicle authorized for search, shall identify such receptacles in which assets or books of account, electronic devices and documents are kept and to hand over keys of such receptacles to the investigating officer.

(7) No person shall prevent any investigating officer or any officers assisting him from execution of order of search and seizure made under rule 3.

14. Obligations of investigating officer.- (1) The investigating officer before conducting the search shall-

- (a) identify himself either by name or by official identification documents;
- (b) show order of the Commission under rule 3 to the person who occupies the premises or to any person in charge of building, place, vessel or vehicle etc. authorized to be searched and on request provide copy of the order, made under rule 3, authorizing the search.

CHAPTER IV MISCELLANEOUS

15. Safe custody of seized documents, digital evidence or electronic devices.- (1) The documents, digital evidences or electronic devices seized by the investigating officer shall be transported in a safe manner to the place of custody.

(2) The investigating officer shall keep in his custody any documents, books of accounts, registers, electronic devices or other documents and records seized under these rules for such period not later than the conclusion of the investigation, as provided by the law.

(3) The investigating officer shall ensure that records in physical form are not altered, damaged, mutilated and the digital evidences in electronic form are not altered or erased.

(4) The investigating officer shall ensure that the physical documents and electronic devices on which electronic records are maintained and stored are kept in suitable physical and environmental conditions.

(5) The investigating officer shall use antistatic evidence bags or well-padded containers in order to seize and/or transport fragile or sensitive digital evidences or electronic devices.

16. Return of documents.- (1) The investigating officer shall return the documents or electronic devices seized under these rules to the company or the other body corporate or, as the case may be, to the person from whose custody or power they were seized or any other responsible person not later than the thirtieth day after such seizure:

Provided that, where the investigating officer is satisfied that the documents or electronic devices seized under these rules have evidentiary value or are necessary for the investigation, the same shall not be returned to the person from whose custody or power they were seized till the finalization of the investigation:

Provided further that the investigating officer may, before returning such books, registers, electronic devices, other documents and record as aforesaid, place identification mark on them or any part thereof.

(2) Any personal information severable from any document or electronic device seized and kept in accordance with these rules shall be returned by the investigating officer to the person to whom such information relates on a written request being made in this behalf by him.

17. Protection of personal information.- The personal information contained in any document seized and kept in accordance with these rules shall not be divulged to any third person, except for the compliance of any law for the time being in force, without the consent of the person to whom the information relates.

18. Forensic of the seized documents.- The investigating officer may, subject to approval of the Commission, submit any documents seized or any digital evidence collected under these rules to such forensic expert of any federal or provincial investigation agency, bureau or authority as deemed appropriate by the investigating officer for examination or analysis and report during the course of investigation under the Act.

- 19. Retention of forensic copy.-** Notwithstanding anything contained in rule 16 -
- (a) forensic copy of the data or mirror image of electronic device and any copy thereof may be retained, on being satisfied that such data or image has evidentiary value; and
 - (b) any copy made or generated from any other documents or electronic devices seized in accordance with these rules may also be retained.

20. Penalty.- If any person contravenes or fails to comply with any provision of these rules, he shall be punished in accordance with section 40A of the Act.

SEIZURE MEMO

Investigation No. _____

Title: _____

Date: _____

Investigation against under SECP Act, 1997 or any administered legislation

The investigation officer, being relevant to the captioned investigation, has seized the record. The details of the record are as under: -

S. No	Description & detail of Documents/ Material	Nature/Type	Pages
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			


Taken over by
Name: _____
Signature of I.O;

Produced by
Name: _____
(Signature of the person
who has produced the
documents or from whom
the seizure is effected)

Witness No.1
Signature _____
Name _____
CNIC No _____

Witness No.2
Signature: _____
Name _____
CNIC
No _____

[No. Sy/SECP/8/13]


(Bilal Rasul)
Secretary to the Commission