

**GOVERNMENT OF PAKISTAN  
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN**

Islamabad the 12<sup>th</sup> April, 2016

**NOTIFICATION**

**S.R.O. 332 (I)/2016.**— The following draft of the Public Offering of Securities Rules, 2016 proposed to be made by the Federal Government in exercise of its powers conferred by section 175 of the Securities Act, 2015 (III of 2015) read with sections 87, 88 and 94 thereof and sections 84, 86, 90 and 120 of the Companies Ordinance, 1984 (XLVII of 1984) is hereby published in the official Gazette for information of all the person likely to be affected thereby and notice is hereby given that objections or suggestions, if any, received from any person in respect of the said draft within a period of thirty days from the date of placement of the rules on the website of the Commission shall be taken into consideration.

**DRAFT RULES**

**1. Short title, commencement and applicability.**— (1) These rules may be called the Public Offering of Securities Rules, 2016.

(2) They shall come into force at once.

(3) Save as provided in sub-section (1) and (4) of section 87 of the Act these rules shall apply to-

- (i) the companies proposing to offer Securities to the public;
- (ii) listed companies proposing to issue securities through right issue and bonus issue;
- (iii) an offeror proposing to offer securities for sale to the public; and
- (iv) sponsors of the issuer and listed companies.

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

- (i) "Act" means the Securities Act, 2015 (III of 2015);
- (ii) "IPO" means initial public offering;
- (iii) "Ordinance" means the Companies Ordinance, 1984 (XLVII of 1984);
- (iv) "Public Offer" means offer of securities by an issuer or offeror to the public or a Section of the Public but does not include private offering or

private placement;

(v) "Section of the Public" includes existing members; and

(vi) "Sponsor" means,-

(a) a person who has contributed initial capital in the issuing company and has the right to appoint majority of the directors on the board of the issuing company directly or indirectly by virtue of shareholding held in its own name and/or in the names of his relatives, associated companies and associated undertakings;

(b) a person who replaces the person referred to in clause (a) above; and

(c) a person or group of persons who has management control of the issuing company whether directly or indirectly.

*Explanation.*— For the purpose of this sub-rule the term "relative" includes a spouse, father, mother, brother, sister and son or daughter, including a step or adopted child.

(2) Words and expressions used but not defined in these rules shall have the same meanings as are assigned to them in the Ordinance, the Act, the Securities and the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997).

**3. Conditions for issue of shares by way of Initial public offering (IPO).**- (1) A company which proposes to raise capital through issue of shares to the public by way of IPO shall comply with the following conditions, namely:-

- (i) in case the issuer is a public limited company, the shares being offered are either the right shares declined by the existing members or the issuer has obtained approval of the Commission under the first proviso to sub-section (1) of section 86 of the Ordinance;
- (ii) save as provided in sub-section (1) and (4) of section 87 of the Act, the issuer shall, subject to compliance with the provisions of the Act and rules and regulations made thereunder, issue, circulate and publish prospectus after approval of the Commission under sub-section (1) of section 88 of the Act read with sub-section (2) of section 87 thereof;
- (iii) the issue shall be fully underwritten by at least two underwriters and the underwriters shall not be associated companies or associated undertakings of the issuer;
- (iv) the sponsors of the issuer shall not enter into any agreement or arrangements directly or indirectly with the underwriters with respect to the purchase of shares taken up by the underwriters to the issue;
- (v) the sponsors of the issuer shall retain their entire shareholding in the company for a period of not less than twelve months from the last date for the public subscription or from the date of commencement

of commercial operation or production by the company, whichever is later;

- (vi) the sponsors of the issuer shall retain not less than twenty five percent of the paid up capital of the company for not less than three financial years from the last date for the public subscription or from the date of commencement of commercial operations or production by the company, whichever is later;
- (vii) subject to clauses (v) and (vi), the sponsors of the issuer may sell their shareholding through block-sale and shall report the sale of shares, on same day, to the securities exchange and notify to the Commission change in particulars of their shareholdings in the form and manner as specified in section 103 of the Act and regulations made thereunder;
- (viii) the shares held by sponsors shall be deposited in an account with a central depository in freeze form:

Provided that charges of opening and maintaining of such account shall be borne by the holder of such shares; and

- (ix) in case capital is being raised for a green field project, balancing, modernization and replacement or expansion,-
  - (a) the size of capital to be issued shall be in accordance with the financial plan approved by the board of directors of the issuer and the financial plan shall be disclosed in the prospectus and variations, if any, in the financial plan till publication of the prospectus along-with rationale for such variations shall also be disclosed in the prospectus;
  - (b) the issuer shall before making the offer of shares to the public provide the Commission a certificate from its auditors confirming that,-
    - (I) the financial plan disclosed in the prospectus has been verified by the auditors;
    - (II) the shares allocated to sponsors, foreign and local investors, if any, have been fully paid for;
    - (III) eighty per cent of the proceeds of the sponsors' subscription have been utilized in the project; or the issuer has opened an escrow account with a scheduled bank where proceeds of the offer to the public shall be kept and shall be utilized after eighty percent of the proceeds of the sponsors' equity subscription is utilized;
    - (IV) the land for the project, where required, has been acquired;
    - (V) letters of credit, where required, have been opened;

- (VI) entire plant and machinery, where required, has been dispatched to the issuer by the supplier;

*Explanation.*— For the purpose of this clause, the term, “entire plant and machinery”, means the equipments that are essential for commencement of the commercial production or operation by the issuer; and

- (VII) in case of partial dispatch of plant and machinery, the issuer shall provide a certificate from a company not being its associated company or associated undertaking, registered with the Pakistan Engineering Council as consultant and whose name appears, as a valuer, on the panel of Pakistan Banks Association, stating that commercial production or operation can be commenced without arrival of the un-dispatched equipments;

- (c) the issuer shall obtain a report from a company, not being its associated company or associated undertaking, whose name appears, as a valuer, on the panel of Pakistan Banks Association verifying the implementation status of the project disclosed in the prospectus; and

- (d) the issuer shall submit, progress report on implementation of the project on quarterly basis till commencement of the commercial production or operation of the project, to the Commission for information and the securities exchange concerned for public dissemination.

*Explanation.*— For the purposes of this clause “green field project” means a project that is being newly built.

- (2) In case the shares being offered for sale are preference shares or any other equity security, the issuer has obtained approval of the Commission under section 90 of the Ordinance and the rules made thereunder; and particulars of such equity security are disclosed in the prospectus.

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

- (i) the company has commenced commercial operations and based on its latest audited accounts for not less than twelve months, it has—
  - (a) earned profit from its principal operations; and
  - (b) positive earnings per share;
- (ii) save as provided in clause (vi), the premium on public offering shall not exceed the amount of premium charged on placements with foreign or local investors, if such placement has been made within a period of six months preceding the opening of the public subscription

and the names and addresses of such investors shall be disclosed in the prospectus;

- (iii) the issue shall be fully underwritten in the manner as provided in clause (iii) of rule 3 and the conditions prescribed in clause (iv) of rule 3 shall be fulfilled;
- (iv) the company shall justify the amount of premium per share which shall be fully disclosed in the prospectus;
- (v) the employees of the company getting preferential allocation, if any, shall be charged premium at the same rate as the public;
- (vi) the shares allotted or allocated to any person including employees on account of preferential allocation within a period of six months preceding the opening of the public subscription, at a price lesser than the price at which shares are to be offered to the public shall not be saleable or transferable for a period of six months from the date of close of the public subscription;
- (vii) the company shall ensure that the shares allotted on account of preferential allocation under clause (vi) are deposited in an account with a central depository in freeze form:

Provided that charges of opening and maintaining of such account shall be borne by the holder of such shares; and

- (viii) the provisions of clauses (i) and (ii) shall not be applicable where the issue is made through the book building.

**5. Issue of shares at discount.-** A company may issue shares to the public at discount subject to the following conditions, namely:-

- (i) approval of the Commission for issue of shares at discount is obtained under section 84 of the Ordinance;
- (ii) approval of the Commission referred to in clause (i) is valid on the date of publication of prospectus; and
- (iii) particulars of the discount are disclosed in the prospectus. The particulars must include amount of the discount per share, number of shares being issued at discount, total amount of the discount, reason for issue of shares at discount and treatment of the discounted amount in the following years.

**6. Issue of shares by way of right offer by a listed company.—** A listed company may issue shares by way of right offer subject to following conditions, namely:-

- (i) the company shall not make a right issue within one year of an issue of capital to the public or further issue of capital through right issue:

Provided that this clause shall not be applicable to a right issue made for meeting the minimum equity or paid up capital requirements under any law:

Provided further that a company may be allowed to make a right issue within one year of an issue of capital to the public or further issue of capital through right issue in case the company has to comply with the minimum capital or debt equity ratio requirement mentioned in the loan sanction letter issued by a foreign financial institution.

*Explanation.*— For the purpose of this clause, the time period of one year, in case of issue of capital to the public shall be reckoned from the last date for public subscription of such issue and, in case of previous right issue, shall be reckoned from the last date for payment for such previous right issue;

- (ii) the board of directors of the company while deciding the right issue shall in its resolution clearly record the quantum of the issue, issue price per share, purpose of the right issue, use of the proceeds of the issue, its benefits to the company and the risk factors associated with the right issue, if any;
- (iii) the resolution of the board of directors to issue right shares along with copy of the financial plan and three years financial projections duly approved by the board shall be submitted to the Commission for information and the securities exchange for public dissemination on the day of the resolution;
- (iv) the company may charge premium on right shares, if -
  - (a) sponsors of the company undertake to subscribe at least forty per cent of the right issue and in case sponsors shareholding entitle them to less than forty per cent of the right issue then sponsors shall arrange subscription for the balance which together with the shareholding held by sponsors will constitute forty percent, from other shareholders; and
  - (b) the balance right issue is fully underwritten in the manner as provided in clauses (iii) and (iv) of rule 3; and
  - (c) the justification for the amount of premium per share is disclosed in the right allotment letter;
- (v) in case of a right issue, at par value, of a loss making company or a company whose weighted average market closing price of share during the preceding six months has remained below par value, sixty percent of the right issue shall be underwritten in the manner as provided in clauses (iii) and (iv) of rule 3 and for the balance forty percent the sponsors shall provide an undertaking that they will subscribe the right shares to be offered to them and in case sponsors shareholding entitle them to less than forty per cent of the right issue

then sponsors shall arrange subscription for the balance, which together with the shareholding held by sponsors will constitute forty percent, from other shareholders:

Provided that the condition of sixty percent of the right issue to be underwritten may be relaxed if the sponsors provide a firm undertaking that they would either themselves subscribe or arrange for subscription to the remaining right shares.

*Explanation.*— For the purpose of this clause “a loss-making company” means,-

- (a) a company which has incurred losses as per its latest audited accounts despite accumulated profits; and
  - (b) a company having accumulated losses as per its latest audited accounts despite having profitable operations for the current year;
- (vi) the company may issue right shares at discount, if,-
- (a) approval of the Commission for issue of shares at discount is obtained under section 84 of the Ordinance;
  - (b) approval of the Commission referred to in sub-clause (a) of clause (vi) is valid on the date of offer of such right shares;
  - (c) particulars of the discount are disclosed in the prospectus for issue of such right share. The particulars must include amount of the discount per share, number of shares being issued at discount, total amount of the discount, reason for issue of shares at discount and treatment of the discounted amount in the following years; and
  - (d) the issue is underwritten in the form and manner as mentioned in clause (v);
- (vii) the book closure shall be made within thirty days from the date of the resolution by the board of directors or approval of the Commission where required and letter of right shall be dispatched or credited within the time period as specified in the relevant regulations of the securities exchange and the payment and renunciation date once announced for the letter of right shall not be extended;
- (viii) if an announcement of the issue of bonus and right shares is made simultaneously, the resolution of the board of directors shall specify whether the bonus shares covered by the announcement qualify for right entitlement;
- (ix) the sponsors shall not enter into any agreement or arrangement directly or indirectly with the underwriters for the purchase of shares taken up by the underwriters;
- (x) in case purpose of the right issue is to finance a project like expansion, BMR etc. the company shall submit progress report on

implementation of such project till its completion, on quarterly progress report, to the Commission for information and the securities exchange for public dissemination; and

- (xi) a right issue once announced shall not be varied, postponed, withdrawn or cancelled.

**7. Right to renounce a right offer.-** (1) Where members of a company are offered right shares, the directors may, unless the articles of the company provide otherwise, allow the members to renounce their right to subscribe such shares in favour of any other person and the letters of right issued to the members shall contain a statement of such right.

(2) The directors' decision under sub-rule (1) to allow another person to subscribe to shares in place of the member shall be deemed to be a decision under sub-section (7) of section 86 of the Ordinance if the said person decides to subscribe to such shares.

(3) The time announced by the company, within which the letters of right shall be subscribed, shall not be more than ninety days from the date of resolution by the board of directors regarding approval of the right issue or approval of the Commission where required and the shares against the paid letters/offer of right shall be credited and/or dispatched with-in the time period as specified in the relevant regulations of the securities exchange:

Provided that the Commission may, upon a reasoned request of the company extend the above time period of ninety days for a period of not more than thirty days:

Provided further, that in case of issue of right shares at a discount the time period or extension thereof provided in clause (d) of sub-section (1) of section 84 of the Ordinance shall be followed.

(4) Save as provided in rule 6 and sub-rule (3) of rule 7 the right issue shall be made according to the schedule approved by the securities exchange.

(5) If the time period announced by the company for payment of letters or offer of right and credit and/or dispatch of shares against paid letters of right is less than the time period provided in sub-rule (3) it may be extended by the company in consultation with the securities exchanges, subject to the maximum time allowed under sub-rule (3).

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

- (i) the resolution of board of directors to issue bonus shares shall be communicated to the Commission and the securities exchange on the day of the decision for public dissemination;
- (ii) the company shall retain at least fifteen per cent of the enhanced paid up capital as free reserves; and



(iii) a certificate shall be obtained by the company from the auditor certifying that,-

- (a) the free reserves retained after the issue of bonus shares are not less than fifteen per cent of the increased paid up capital of the company; and
- (b) all contingent liabilities have been deducted while calculating the minimum residual reserve of fifteen per cent and such certificate shall be sent to the Commission for information and the securities exchange on the day of decision for the public dissemination.

*Explanation.--* For the purposes of this rule the term "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 and 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 or otherwise as admissible under the Income Tax Ordinance, 2001 (XLIX of 2001);
- (IV) development allowance reserve created under the provisions of the Income Tax Ordinance, 2001 (XLIX of 2001);
- (V) provisions for taxation to the extent of the deferred or current liability of the company;
- (VI) capital redemption reserve; and
- (VII) unrealized capital gain.

**9. 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.

**10. Offer of sale of shares by the Offeror.—** (1) An Offeror may offer shares for sale to the public subject to the following conditions, namely,-

- (i) the offeror shall, subject to compliance with provisions of the Act and rules and regulations made thereunder, issue, circulate and publish prospectus after approval of the Commission under sub-section (1) of

section 88 of the Act read with sub-section (2) of section 87 thereof;

- (ii) in case of offer for sale of shares of a listed company, the size of the offer of capital to the public shall not be less than one hundred million rupees.

*Explanation.*— For the purpose of this clause, the term, “size of the offer” means the product of the offer price and the number of shares being offered;

- (iii) in case of offer for sale of shares of an unlisted company, the size of the offer of capital to be offered to the public shall be in accordance with the requirements specified in the relevant regulations of the securities exchange:

Provided that this clause shall not be applicable in case of offer for sale of shares of an unlisted company by the Government through privatization;

- (iv) no premium shall be charged unless-
  - (a) the company whose shares are offered fulfills the requirements of clauses (i) and (ii) of rule 4; and
  - (b) the offer is fully underwritten in the manner as provided in clauses (iii) and (iv) sub-rule (1) of rule 3:

Provided that this sub-clause shall not be applicable in case of offer for sale of shares by the Government through privatization.

- (v) the offeror shall justify the amount of premium per share, if any, and the justification shall be fully disclosed in the prospectus;
- (vi) save as provided in clause (vii), the premium on public offering shall not exceed the amount of premium charged on divestment to foreign or local investors, if such divestment has been made within a period of six months preceding the opening of the public subscription and the names and addresses of such investors shall be disclosed in the prospectus;
- (vii) the shares divested to any person on account of preferential allocation, within a period of six months preceding the opening of the public subscription, at a price lesser than the price at which shares are to be offered to the public shall not be saleable or transferable for a period of six months from the date of close of the public subscription;
- (viii) the provisions of sub-clause (a) of clause (iii) shall not be applicable on offer for sale where the offer is made through the book building process in accordance with the listing regulations of the securities exchange in Pakistan; and
- (ix) the offeror shall notify change in particulars of its shareholding to the Commission in the form and manner as specified in section 103 of the Act and regulations made thereunder.

(2) Shares of an unlisted company shall not be offered for sale to the public unless,-

- (i) the company whose shares are offered has commenced commercial operation or commercial production and has audited accounts for a period not less than one complete financial year; and
- (ii) sponsors of such company have undertaken to comply with the requirements of clause (v) to (vii) of sub-rule (1) of rule 3.

**11. Conditions for issue of debt securities in the nature of redeemable capital not based on interest.—** (1) Any public limited company or body corporate, may issue to the public any of its debt securities in the nature of redeemable capital not based on interest, under section 120 of the Ordinance subject to the following conditions namely:-

- (i) the issuer has obtained approval of the Commission for issue, circulation and publication of prospectus under sub-section (1) of section 88(1) of the Act read with sub-section (2) of section 87 thereof;
- (ii) the issuer is authorized by its constitutive document to issue the security;
- (iii) the issuer and the security is rated by a credit rating company licensed by the Commission under the Act; and
- (iv) the issuer fulfils all the requirements relating to public offering, disclosures, reporting and listing of the relevant regulations and guidelines of the Commission and the securities exchange.

(2) The issue of a debt security shall not be restructured or rescheduled without the approval of the debt security holders by way of a special resolution. The issuer shall redeem the debt securities of all the debt securities holders who have not given their consent to the restructuring or rescheduling.

**12. Conditions for issue of convertible securities.—** (1) Any public limited company or body corporate, may issue to the public any of its equity or debt securities subject to the following conditions:

- (i) the issuer has obtained approval of the Commission under the first proviso to sub-section (1) of section 86 of the Ordinance;
- (ii) the issuer is authorized by its constitutive document to issue convertible securities;
- (iii) the conversion ratio or mechanism is disclosed in the prospectus; and
- (iv) mechanism for resolution of dispute if arises at the time of conversion is provided in the prospectus.

13. **Repeal:** These rules shall repeal clause (i), (ii), (iv) and (v) of sub-rule (3) of rule 1 and rule 3, rule 4, rule 5, rule 5A, rule 6, rule 7, rule 9, rule 10 and rule 11 of the Companies (Issue of Capital) Rules, 1996.

---

[No. SMD/CIW/MISC./10/2015]

*Bushra*  
*12/4/16*

**(Bushra Aslam)**  
Secretary to the Commission