

GUIDELINES FOR MERGERS AND AMALGAMATIONS



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1. PREAMBLE

These guidelines have been formulated pursuant to section 510 of the Companies Act, 2017 (the "Act"). They outline the procedures governing compromises, arrangements and reconstruction between a company and its creditors or any class of them, or between the company and its members or any class of them.

Such compromises and arrangements are generally termed as mergers and amalgamations and are regulated under the provisions of the Act. A merger is a combination of two or more existing companies which merge their identities to form a different company which can either be one of the existing companies or a separate new entity altogether.

The beginning of a merger/de-merger/reconstruction (i.e. "scheme of arrangement") may take place through common agreements between the transferor company and the transferee company but mere agreement does not provide a legal cover to the transaction unless it carries the sanction of the relevant company court or the Securities and Exchange Commission of Pakistan (the "Commission"), as the case may be. To obtain such sanction, the procedure laid down under the Act shall be followed.

The Commission will continue to assess each scheme of arrangement on its merits according to the specific nature of the transaction, the industry and the potential impact in each case. The general principles set out in these guidelines provide a framework within which such schemes may be reviewed.

It should be noted that these guidelines are not applicable on the mergers and acquisitions of banking companies, which are governed under the Banking Companies Ordinance 1962, under which the State Bank of Pakistan regulates shares acquisitions of banking companies.

These guidelines may not cover every issue or circumstance which may arise in review of a scheme of arrangement. The transactions may involve different situations and analysis of particular issues may be tailored to the specific circumstances of a scheme. Therefore, these guidelines are to be applied flexibly.

Nevertheless, these guidelines aim to provide an enhanced level of understanding to the parties to a scheme of arrangement, including their advisers, the business community and the general public.

2. SCHEME OF ARRANGEMENT

Once the merger/de-merger/reconstruction partners have been identified and the terms of the agreement have been settled, the scheme of arrangement shall be prepared by the concerned companies.

A. Contents of the Scheme

There is no specific format for the scheme of arrangement but it should contain the following information:

- Particulars about transferee and transferor companies
- Main terms of transfer of assets from transferor to transferee (including power to execute on behalf of the transferee the deeds/documents being given to the transferee)
- Main terms of transfer of liabilities from transferor to transferee (covering any conditions attached to loans, debentures, bonds, and other liabilities from bank, financial institutions, trustees and listing conditions attached thereto)
- Rationale/benefits/triggering factor for the scheme
- Impact of the scheme on various classes of shareholders and creditors of transferee and transferor companies
- Impact of the scheme on the general public (if applicable)
- Clearly specified effective date from when the scheme will be deemed to have come into effect
- Conditions as to carrying on the business activities by transferor between the effective date and the completion date
- Description of consequences of the scheme coming into effect on effective date
- Share capital of transferor company and transferee company specifying authorized capital, issued capital and subscribed and paid up capital before and after the scheme comes into effect
- Detail of capital or debt restructuring, if any
- Description of proposed share exchange ratio, commonly known as **the swap ratio**, any conditions attached thereto, any fractional share certificates to be issued, transferee company's responsibility to obtain consent of concerned authorities for issue and allotment of shares and possible listing
- Surrender of shares by shareholders of transferor company in exchange for new share certificates
- Status of employees of the transferor company from the effective date and the status of provident fund, gratuity fund, super annuity fund or any special scheme or funds created or existing for the benefit of employees
- Treatment of any debt balance on the transferor company's balance sheet on the effective date
- Enhancement of borrowing limits of the transferee company upon the scheme coming into effect, if any
- Miscellaneous provisions covering income tax dues, contingencies and other accounting entries deserving attention or treatment
- Commitment of transferor and transferee companies towards making application/petition for sanction of scheme under the applicable provisions of the Act and all other enabling provisions of the law
- Other relevant approvals, if required, from different agencies, regulatory bodies etc
- Consent of the transferor and transferee companies to change(s) in the scheme by the

Court/Commission and exercising of powers on behalf of the companies by their respective Boards

- Description of powers delegated to concerned representatives of transferor and transferee companies to give effect to the scheme
- Conditions attached to the scheme, if any
- Clear statement of the fact that the scheme will not come into effect unless relevant approvals are granted
- Clear statement of the fact that the transferor company will be dissolved without winding up after the scheme comes into effect (if applicable)
- Statement of who will bear costs in connection with the scheme
- Any or all material information in respect of the transferor and transferee company which is ancillary for the purpose of the scheme

B. Swap Ratio

The swap ratio or the share exchange ratio shall ideally be worked out by a recognized firm of chartered accountants who are experts in the field of valuation, and who shall follow a proper methodology and consider all financial aspects of the scheme. It shall be ensured that such determination isn't contrary to the law or unfair to any of the shareholders of the companies that are party to the scheme of arrangement. The share exchange ratio shall be calculated after duly examining the audited financial statements and all other material information pertaining to the financial positions of the companies to ensure that the share exchange ratio is fair and reasonable. The firm shall also ensure that any departure from the reporting framework highlighted in the audit reports of relevant companies is addressed in the swap ratio.

To determine the fair value of shares, the following well-known methods may be applied:

- (a) The net worth method (or the break -up value method)
- (b) The market value method
- (c) Future earning capacity (commonly known as the discounted cash flow method)
- (d) The comparable transaction method

Since no two valuations are identical, ideally and where possible, the fair value of shares shall be determined by averaging the fair value arrived at through any three of the above-mentioned methods. In any case, the rationale behind choosing a particular method or methods shall be clearly elaborated in the swap ratio report. All assumptions used for the calculations shall be stated and details of all calculations shall be annexed. The sources of all the data used for the calculations shall also be clearly mentioned.

The relevant factors which shall be considered in determining the final share exchange ratio are enumerated as follows:

- In case of a public company listed on the stock exchange, the price prevailing on valuation date
- The past history of the share prices of the companies
- In case of a public company not listed on stock exchange or a private company, the dividends if any, ascertaining the profit earning capacity
- Where there is no dividend, the profits the company has been making and should be making

- Where a company is ripe for winding up, the break-up value of the company
- The dividends presently paid on the shares of the transferor and transferee companies
- The relative growth prospects of the transferor and transferee companies
- The values of the net assets of the transferor and transferee companies

Ultimately, the facts and circumstances of each case, the nature of business, the prospects of profitability and other deliberations with respect to each case would be considered to arrive at the swap ratio.

C. Approval of the Scheme by Board of Directors

The respective board of directors of the transferor and transferee companies are required to approve the scheme of arrangement.

D. No Objection Certificates from Creditors

The scheme has to be cleared by the financial institutions/banks which have granted loans to the transferor and transferee companies as well as the trustees for debenture holders. No Objection Certificate (NOC) with respect to the scheme must be obtained from all secured creditors of the companies.

E. No Objection Certificate from the Competition Commission of Pakistan

The review of mergers and acquisitions is among the functions and responsibilities of the Competition Commission of Pakistan (CCP). The procedure adopted by CCP to examine the application and for issuance of NOC is provided in the CCP's Guidelines on Mergers.

F. Intimation to Pakistan Stock Exchange

Listing regulations require listed companies to communicate price-sensitive information to the stock exchange. Hence, listed companies must intimate the stock exchange while entering into a scheme of arrangement.

G. General Considerations

The other requirements to be fulfilled by the transferor and transferee companies with respect to the scheme of arrangement are as follows:

- The companies must ensure that all requisite statutory procedures for supporting such a scheme have been complied with
- The completeness and workability of the scheme must be ensured
- The scheme must not be *ultra-vires* to the memorandum of association of any of the companies
- The scheme must be backed up by the requisite majority vote as required under Section 279(2) of the Act
- The decision of the majority must be just and fair so as to legitimately bind even the dissenting member(s)
- The scheme shall not adversely impact the interests of minority shareholders in any way
- All necessary and material information pertaining to the scheme shall be provided to all the members
- All material information pertaining to the scheme must be brought to the knowledge of the Court/Commission by the concerned petitioners seeking sanction of such scheme

- All relevant financial institutions and creditors are to be duly informed about the scheme
- The material on the basis of which share value has been worked out shall be placed on record and be brought to the notice of all members, by providing all salient features and relevant details regarding the methodology of valuation.
- The proposed scheme is not to be intended to resort to monopolistic trade practices
- The proposed scheme shall not be in violation of any provision of law or in conflict with the economic interest of the country or in any manner contrary to public policy or interests of the general public

3. PETITION TO THE COURT

For any scheme of compromise, arrangement, amalgamation or reconstruction by transferor and transferee companies which are neither small sized companies (as defined in the Third Schedule to the Act) nor public sector companies wholly owned by the Federal Government, an application shall be filed under Section 279 of the Act, before the Company Bench of the High Court having jurisdiction under the Act (in accordance with S.R.O. 840(I)2017, read with S.R.O. 1126(I)/2019).

The important aspects of the process to be followed after a petition is filed in Court are as follows:

A. Order to Conduct Meetings of Members and Creditors

Upon hearing the petition, the Court gives directions to fix the date, time, venue and quorum for the meetings of members and/or creditors and to appoint a chairman to preside over the meeting and submit a report to the Court. The Court may direct that notice of the meetings be advertised in daily newspapers, in addition to the dispatch of notices to members/creditors by the chairman. Every notice of the meeting which is given by advertisement shall include a statement setting forth the terms of the compromise or arrangement and explaining its effect or a notification of the place at which and the manner in which members/creditors entitled to attend the meeting may obtain copies of such a statement.

The meeting shall be held on the fixed date. The scheme will be considered as approved if a majority in number representing three-fourths in value of the creditors or class of creditors, or members, as the case may be, present and voting either in person or, where proxies are allowed, by proxy at the meeting, agree to the scheme.

B. Disclosures in Statement under Section 281 of the Act

Where a meeting of members/creditors is called under Section 279 of the Act, with every notice calling a meeting, an explanatory statement accompanying every scheme of arrangement shall be sent to such persons under Section 281 of the Act, which shall contain the following information:

- Brief background of the companies/parties involved in the scheme
- Strategic context surrounding the proposal and future strategy being pursued
- Summarized operating and financial performance data for the previous five years and for the current year to the latest quarter
- Any material interest of the directors including the chief executive of the company in their capacity as such or as member or creditors of the company or otherwise and the effect on those interests, of the compromise or the arrangement if and in so far it is different from the effect on the like interest of other persons
- Risk factors, so that shareholders can assess the impact on the overall risk profile, consequent to the scheme in question
- Financial statements after giving effect to the proposed scheme
- Accounting and financial reporting policies for recording the scheme
- Tax consequences of the scheme
- Effect, if any, of the proposed arrangement on the claims of various security-holders
- Effect of the proposed arrangement on shareholding/ownership structure, including on promoters and other principal shareholders
- The number of shares to be issued consequent to the scheme under various possible valuation methods

- Valuation report and fairness opinion justifying the proposed exchange ratio
- Explicit reporting as to whether the companies concerned plan to make any fresh issue before the completion of the scheme, and if so, the method of adjusting the previously announced exchange ratio consequent to the said plan
- Intention of possible purchase of shares of one or more companies involved in the scheme, by the other company or companies, the maximum number of shares to be purchased and the maximum amount to be utilized for the purpose and the treatment of the consequent shareholding in the arrangement

The above list is only illustrative of what could be considered relevant, in the context of a scheme of arrangement.

C. Role of the Commission

The Securities and Exchange Commission of Pakistan is a party to the petition for every scheme of arrangement filed in Court. The Commission examines the petition in view of the following factors:

- The scheme of arrangement, adopted by the board of each of the petitioner companies
- Approval of board of directors of transferee and transferor petitioner companies and copies of board resolutions in this regard
- Notices of members/creditors meetings to ensure that required information has been disclosed in light of the requirements of Section 281 of the Act
- Approval of three fourth in value of the creditors or members of the petitioner companies, as the case may be
- Latest annual audited financial statements of petitioner companies; and supplementary audited financial statements, if the last annual audited financial statements of any of the petitioner company relate to a financial year ending more than one hundred and eighty (180) days before the first meeting of the petitioner company summoned for the purposes of approving the scheme
- A report adopted by the board of the petitioner companies explaining effect of scheme on each class of members, laying out in particular the share swap ratio, specifying any special valuation difficulties
- Report of the expert(s) with regard to asset valuation(s), if any
- Any complaint, investigation or court cases pending or concluded before the Commission or any other agency, if any, as per the record
- All other material facts relating to the petitioner companies, including pendency of investigation proceedings in relation to the petitioner companies under the Act
- Review of the figures and methodology used to arrive at the share swap ratio, and analysis of the ratio in line with salient judgments on the subject, to ensure that the terms of scheme are not prejudicial to any of the shareholders of petitioner companies

In case the statement provided under Section 281 of the Act or any other information referred above is deficient on any account, the Commission highlights the same in its comments submitted before the Court. The Court then directs the companies to remove such objections and thereafter, a confirmation is sought from the Commission that there are no further observations.

D. Sanction Order

The Court may, by an order, sanction the scheme and make provisions for any or all of the matters specified under Section 282(3) of the Act.

4. APPLICATION TO THE COMMISSION

For any scheme of compromise, arrangement, amalgamation or reconstruction filed by transferor and transferee companies that are small sized companies (as defined in the Third Schedule to the Act) or public sector companies (PSCs) to the extent of the Federal Government, an application is to be made before the Commission under Section 279 of the Act. Where an application is filed with the Commission, the important aspects of the process followed are as follows:

A. Eligibility Criteria

On receipt of merger application by the Commission under Sections 279 to 282 of the Act, the application is initially reviewed in order to determine the appropriateness of the Commission's jurisdiction for any such application (including the classification of each applicant company in terms of the Third Schedule to the Act). In case of non-jurisdiction, application(s) are returned whereas applications of companies meeting the criteria of being small sized companies or PSCs to the extent of the Federal Government are processed.

B. Checklist of Documents Required with the Scheme

1. Original bank challan for the prescribed application fee (as per the latest amended Seventh Schedule to the Act, in terms of S.R.O. 980 (I)/2022)
2. Copies of board resolutions of all applicant companies
3. Latest annual audited financial statements of all applicant companies
4. List of secured creditors of applicant companies and NOCs with respect to the scheme from all secured creditors
5. Auditor's certificate for swap ratio calculation by a chartered accountant firm having valid certificate of practice from the Institute of Chartered Accountants of Pakistan
6. Valuation report(s) (if any) by valuer registered with the Pakistan Engineering Council
7. Affidavits by authorized representatives of the applicant companies, duly attested by the Oath Commissioner, furnished in terms of Regulation 5 of the Companies (General Provisions and Forms) Regulations, 2018 in support of the application, stating that all contents of the application (including all annexed documents) are true and correct.

C. Examination of Application

Firstly, the application is examined for correctness of contents. The concerned registrar examines relevant information about the applicant companies from the available record, which comprises of contents including but not limited to the following:

- Registered office address of each applicant company
- Authorized and paid-up share capital of each applicant company
- Corporate compliance behavior of each applicant company
- Details of registered secured creditors
- Details of any proceedings pending with the concerned Company Registration Office (CRO)
- Any other matter that pertains to the applicant companies

Once it is ascertained that the submissions made in the application are correct, the application is examined for completeness of its contents which includes but is not limited to the following:

- Scheme of arrangement, including the rationale for scheme and its impact on members and creditors of applicant companies
- Latest annual audited financial statements of applicant companies; and supplementary audited financial statements, if the last annual audited financial statements of any of the applicant company relate to a financial year ending more than one hundred and eighty (180) days before the first meeting of the applicant company summoned for the purposes of approving the scheme
- Copies of board resolutions reflecting approval of board of directors of the applicant companies
- Report of the expert(s) with regard to asset valuation(s), if any
- A report adopted by the board of the applicant companies explaining effect of scheme on each class of members, laying out in particular the share swap ratio, specifying any special valuation difficulties
- All other material facts relating to the applicant companies, including pendency of any complaint(s), investigation(s) and/or court case(s) or any adverse remarks in respect of the applicant companies
- Affidavit that accurate and complete information has been provided by the applicant companies to the Commission specifically with regard to rights and title to the underlying properties forming subject matter of the application
- Dissenting members of the applicant companies, if any
- Impact of scheme on minority shareholders
- Computation of swap ratio
- Particulars of charges/mortgages on companies' properties and related NOCs, etc.
- Any other information, as relevant

In case the application is deficient on any account, the Commission shall require any such information or explanation from the applicant companies.

D. Order to Conduct Meetings of Members and Creditors- in line with Section 282 of the Act

After due deliberation and ensuring that the application is complete in all aspects, the Commission shall order meeting(s) of the creditors or class of creditors or the members or class of members, as the case may be and to appoint a chairman to preside over the meeting and submit a report to the Commission. The decision of the Commission shall be duly conveyed to the applicant companies.

The chairman may be appointed from the panel of provisional managers and official liquidators maintained by the Commission under section 315 of the Act or any other suitable person as deemed fit by the Commission.

The chairman so appointed by the Commission shall give notice to members/creditors through courier service and/or, if directed by the Commission, also cause such notice to be published in daily newspapers having wide circulation, in abridged form or otherwise. Every notice of the meeting dispatched/published shall include a statement setting forth the terms of the compromise or arrangement and explains its effect, and shall also specify the place at which the subject meeting will take place. The members/creditors entitled to attend the meeting may obtain copies of such a statement.

Where an order has been made by the Commission under subsection 282 (1) of the Companies Act,

2017, merging companies or the company in respect of which a division is proposed, shall also be required to circulate the following for the meeting so ordered by the Commission, namely:—

(a) the draft of the proposed terms of the scheme drawn up and adopted by the board of each of the applicant companies;

(b) confirmation that a copy of the draft scheme has been filed with the registrar;

(c) a report adopted by the board of the applicant companies explaining effect of compromise on each class of members, laying out in particular the share swap ratio, specifying any special valuation difficulties;

(d) the report of the expert with regard to valuation, if any;

(e) a supplementary audited financial statement if the last annual accounts of any of the applicant company relate to a financial year ending more than 180 days before the first meeting of the company summoned for the purposes of approving the scheme.

The scheme will be considered as approved if a majority in number representing three-fourths in value of the creditors or class of creditors, or members, as the case may be, present and voting either in person or, where proxies are allowed, by proxy at the meeting, agree to the scheme.

E. Disclosures in Statement under Section 281 of the Act

Where a meeting of members/creditors is called under Section 279 of the Act, with every notice calling a meeting, an explanatory statement accompanying every scheme of arrangement shall be sent to such persons under Section 281 of the Act, which shall contain the following information:

- Brief background of the companies/parties involved in the scheme
- Strategic context surrounding the proposal and future strategy being pursued
- Summarized operating and financial performance data for the previous five years and for the current year to the latest quarter
- Any material interest of the directors including the chief executive of the company in their capacity as such or as member or creditors of the company or otherwise and the effect on those interests, of the compromise or the arrangement if and in so far it is different from the effect on the like interest of other persons
- Risk factors, so that shareholders can assess the impact on the overall risk profile, consequent to the scheme in question
- Financial statements after giving effect to the proposed scheme
- Accounting and financial reporting policies for recording the scheme
- Tax consequences of the scheme
- Effect, if any, of the proposed arrangement on the claims of various security-holders
- Effect of the proposed arrangement on shareholding/ownership structure, including on promoters and other principal shareholders
- The number of shares to be issued consequent to the scheme under various possible valuation methods
- Valuation report and fairness opinion justifying the proposed exchange ratio
- Explicit reporting as to whether the companies concerned plan to make any fresh issue before the completion of the scheme, and if so, the method of adjusting the previously announced exchange ratio consequent to the said plan

- Intention of possible purchase of shares of one or more companies involved in the scheme, by the other company or companies, the maximum number of shares to be purchased and the maximum amount to be utilized for the purpose and the treatment of the consequent shareholding in the arrangement

The above list is only illustrative of what could be considered relevant, in the context of a scheme of arrangement.

F. Format of Chairperson Report to the Commission

The report to be presented to the Commission must include the following point in the prescribed manner:

- Table of Contents;
- Brief background of the companies/parties involved in the scheme;
- Brief of the Scheme of Arrangement;
- Brief of the Order issued for appointment of the Chairperson;
- Detail of notices issued for the meeting with documentary evidence;
- Pattern of shareholding of all the petitioners;
- Number of shareholders who attended the meeting in person and through proxy (list them separately and attached signed attendance sheet and proxy/ authorization forms);
- Number of shareholders who voted – lists of shareholders who voted for and against must be provided separately;
- Extract of resolution passed – attach signed resolution as annexure to the report;
- Concluding remarks.

G. Sanction Order

Once the meetings of members/creditors have been held under the directions of the Commission and minutes of such meetings approving the scheme of arrangement have been received by the Commission in the manner required, the Commission may, by an order, sanction the scheme and make provisions for any or all of the matters specified under Section 282(3) of the Act.

5. REQUIREMENTS AFTER SANCTION OF PETITION/APPLICATION

A. Filing of Sanction Order

A copy of the order sanctioning the scheme, duly certified by an authorized officer of the Commission, shall be forwarded to the concerned registrar within seven days from the date of the order.

B. Filing of Resolutions of General Meeting

Once the shareholders in the general meeting approve the scheme by a majority in number representing three-fourths in value, the scheme is binding on all the members of the company. A copy of the resolution passed by the shareholders approving the scheme, duly authenticated by a director or secretary of the company, should be filed with the concerned Registrar within 15 days from the date of passing the resolution.

C. Transfer of Assets and Liabilities

The Commission/Court has powers to order for the transfer of any property or liabilities from transferor company to transferee company. Subject to the sanction order, such properties and liabilities of the transferor shall automatically stand transferred to the transferee without any further act or deed from the date the order is filed with the registrar.

D. Listing of Shares at Stock Exchange

After the scheme becomes effective, the transferee company (if listed) shall apply to the Stock Exchange for listing the new shares allotted to the shareholders of the transferor company.

E. Post-merger Secretarial Obligations

The various formalities after sanction of scheme are as follows

- Filing of returns with the Commission
- Transfer of investments of transferor in the name of the transferee
- Intimating banks and financial institutions, creditors and debtors about the transfer of the transferor company's assets and liabilities in the name of the transferee's company

F. Post-merger Effects

- Transfer of property or liabilities of the transferor company to the transferee company;
- Charges on the property of the transferor company shall be enforceable as if the charges were on the property of the transferee company;
- Legal proceedings by or against the transferor company before any court shall by or against the transferee company

6. FILING UNDER SECTION 284 OF THE COMPANIES ACT, 2017

A company and one or more other companies directly or indirectly wholly owned by it, or two or more companies, each of which is directly or indirectly wholly owned by the same person(s) may amalgamate and continue as one company without complying with Sections 279 to 282 of the Act, by directly filing with the concerned registrar Form-35 along with the scheme of amalgamation in terms of Section 284 of the Act read with Regulation 33 of the Companies (General Provisions and Forms) Regulations, 2018

A. Eligibility Criteria

The concerned registrar, on receipt of Form-35 along with the scheme of amalgamation, shall verify the shareholding pattern of transferor and transferee companies as per the available record, in order to consider the applicability of Section 284(1) or Section 284(2) of the Act. If the eligibility criteria are being met, the filed documents will be reviewed by the Commission to ensure compliance of the Act.

B. Checklist of Documents Required with the Scheme

1. Form 35
2. Original bank challan for the prescribed application fee (as per the latest amended Seventh Schedule to the Act, in terms of S.R.O. 980 (I)/2022)
3. Copies of board resolutions of all applicant companies
4. Latest annual audited financial statements of all applicant companies
5. List of creditors and NOCs from all creditors of applicant companies
6. Affidavit by authorized representative of the transferee company, duly attested by the Oath Commissioner, furnished in terms of Section 284 of the Act, declaring that the transferee company will be able to pay its debts as they fall due during the period of one year immediately after the date on which the amalgamation is to become effective.

C. Examination of Documents

Submitted documents are examined in detail to ensure compliance with the following requirements as entailed under Section 284 of the Act:

- The scheme of amalgamation is approved by the board of each amalgamating company
- Each resolution provides that:
 - (i) The shares of each transferor company, other than the transferee company, will be cancelled without payment or other consideration
 - (ii) The board is satisfied that the transferee company will be able to pay its debts as they fall due during the period of one year immediately after the date on which the amalgamation is to become effective
 - (iii) The person or persons named in the resolution will be the director or directors of the transferee company
- The board of each amalgamating company has, not less than twenty days before the amalgamation is proposed to take effect, given written notice of the proposed amalgamation to every secured creditor of each amalgamating company

- A declaration verified by an affidavit has been provided to the effect that the transferee company will be able to pay its debts as they fall due during the period of one year immediately after the date on which the amalgamation is to become effective.

Additionally, information regarding any pending complaint(s), investigation(s) and/or court case(s) or any adverse remarks in respect of the applicant companies shall be reviewed.

In case any of the requirements of the Act have not been complied with, the Commission shall communicate the relevant observation(s) to the transferee company for necessary compliance.

D. Acknowledgement of Filing

Once compliance is made with the requirements of Section 284 of the Act, the concerned registrar if informed that there are no objections on the scheme of amalgamation filed by the transferee company. Accordingly, the concerned registrar shall issue an acknowledgment of filing, in terms of Section 284 of the Act and Regulation 33 of the Companies (General Provisions and Forms) Regulations, 2018 read with Regulation 13(1) of the Companies (Registration Offices) Regulations, 2018.

7. ANNEXURES

A. Relevant Sections of The Companies Act, 2017

Section 279 to 285 of the Act pertain to various aspects of compromises, arrangements and reconstructions. The same are being reproduced here for ready reference:

279. Compromise with creditors and members. —

(1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or -between the company and its members or any class of them, the Commission may, on the application of the company or of any creditor or member of the company or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be called, held and conducted in such manner as the Commission directs.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members, as the case may be, present and voting either in person or, where proxies are allowed, by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Commission be binding on the company, all its creditors, all the members, the liquidators and the contributories of the company, as the case may be:

Provided that no order sanctioning any compromise or arrangement shall be made by the Commission unless the Commission is satisfied that the company or any other person by whom an application has been made under sub-section (1) has disclosed to the Commission, by affidavit or otherwise, all material facts relating to the company, such as the financial position of the company, the auditor's report on the latest accounts of the company, the pendency of any investigation proceedings in relation to the company and the like.

(3) A copy of the order under sub-section (2) sanctioning the compromise or arrangement duly certified by an authorized officer of the Commission shall be forwarded to the registrar within seven days from the date of the order.

(4) A copy of the order under sub-section (2) shall be annexed to every copy of the memorandum of the company issued after the order has been made or in the case of a company not having a memorandum to every copy so issued of the instrument constituting or defining the constitution of the company.

(5) The Court may, at any time after an application has been made to the Commission under this section, stay the commencement or continuation of any suit or proceeding until final disposal of the application.

(6) In this section the expression "company" means any company liable to be wound up under this Act and the expression "arrangement" includes a re-organization of the share-capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods, and for the purposes of this section unsecured creditors who may have filed suits or obtained decrees shall be deemed to be of the same class as other unsecured creditors.

(7) Any contravention or default in complying with requirements of sub-section (4) shall be an offence liable to a penalty of level 1 on the standard scale.

280. Power of Commission to enforce compromises and arrangements. —

(1) Where the Commission makes an order under section 279 sanctioning a compromise or an arrangement in respect of a company, it may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.

(2) If the Commission is satisfied that a compromise or arrangement sanctioned under section 279 cannot be worked satisfactorily with or without modification, it may, initiate proceedings for the winding up of the company.

281. Information as to compromises or arrangements with creditors and members. —

(1) Where a meeting of creditors or any class of creditors, or of members or any class of members, is called under section 279—

(a) with every notice calling the meeting which is sent to a creditor or member, there shall be sent also a statement setting forth the terms of the compromise or arrangement and explaining its effect; and in particular, stating any material interest of the directors including the chief executive of the company, whether in their capacity as such or as members or creditors of the company or otherwise, and the effect on those interests, of the compromise or arrangement if, and in so far as, it is different from the effect on the like interest of other persons; and

(b) in every notice calling the meeting which is given by advertisement, there shall be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement as aforesaid.

(2) Where the compromise or arrangement affects the rights of debenture-holders of the company, the said statement shall give the like information and explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.

(3) Where a notice given by advertisement includes a notification that copies of a statement setting forth the terms of the compromise or arrangement proposed and explaining its effect can be obtained by creditors or members entitled to attend the meeting, every creditor or member so entitled shall, on making an application in the manner indicated by the notice, be furnished by the company, free of charge, with a copy of the statement.

(4) Any contravention or default in complying with requirements of this section shall be an offence liable to a penalty of level 1 on the standard scale; and for the purpose of this sub-section any liquidator of the company and trustee of a deed for securing the issue of debentures of the company shall be deemed to be an officer of the company: Provided that a person shall not be under this sub-section if he shows that the default was due to the refusal of any other person, being a director, including chief executive or trustee for debenture-holder, to supply the necessary particulars as to his material interests.

(5) Every director, including chief executive of the company and every trustee for debenture-holders of the company, shall give notice to the company of such matters relating to himself as may be necessary for the purposes of this section and on the request of the company shall provide such further information as may be necessary for the purposes of this section; and, if he fails to do so within the time allowed by the company, he shall be liable to a penalty of level 1 on the standard scale.

282. Powers of Commission to facilitate reconstruction or amalgamation of companies.

(1) Where an application is made to the Commission under section 279 to sanction a compromise or arrangement and it is shown that —

(a) the compromise or arrangement is proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies or division of a company into one or more companies;

(b) under the scheme the whole or any part of the undertaking or property or liabilities of any company concerned in the scheme (“a transferor company”) is to be transferred to another company (“the transferee company”) or is proposed to be divided among and transferred to two or more companies; and

(c) a copy of the scheme drawn up by the applicants has been filed with the registrar; the Commission may order a meeting of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held and conducted in such manner as the Commission may direct.

(2) Where an order has been made by the Commission under sub-section (1), merging companies or the company in respect of which a division is proposed, shall also be required to circulate the following for the meeting so ordered by the Commission, namely: —

(a) the draft of the proposed terms of the scheme drawn up and adopted by the board of each of the applicant companies;

(b) confirmation that a copy of the draft scheme has been filed with the registrar;

(c) a report adopted by the board of the applicant companies explaining effect of compromise on each class of members, laying out in particular the share swap ratio, specifying any special valuation difficulties;

(d) the report of the expert with regard to valuation, if any;

(e) a supplementary audited financial statement if the last annual accounts of any of the applicant company relate to a financial year ending more than one hundred and eighty days before the first meeting of the company summoned for the purposes of approving the scheme.

(3) The Commission may, either by an order, sanction the compromise or arrangement or by a subsequent order, make provision for all or any of the following matters—

(a) the transfer to the transferee company of the whole or any part of the

undertaking and of the property or liabilities of any transferor company;

(b) the allotment or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(d) the dissolution, without winding up, of any transferor company;

(e) the provision to be made for any persons who, within such time and in such manner as the Commission directs, dissent from the compromise or arrangement;

(f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction, amalgamation or bifurcation is fully and effectively carried out.

(4) If an order under this section provides for the transfer of property or liabilities—

(a) the property, by virtue of the order stands transferred to, and vests in, the transferee company, and

(b) the liabilities, by virtue of the order, stand transferred to and become liabilities of that company.

(5) Notwithstanding anything contained in the Stamp Act, 1899 (II of 1899) or any other law for the time being in force, no stamp duty shall be payable on transfer to the transferee company of the whole or any part of the undertaking and of the property of any transferor company as a result of sanctioning by the Commission, any compromise or arrangement under this Part: Provided that this sub-section (5) shall, in respect of the companies having registered office within the jurisdiction of—

(a) the Islamabad Capital Territory, be applicable at once; and

(b) the Provinces, be applicable upon notification or legislation by the respective Provincial Governments.

(6) The property (if the order so directs) vests freed from any charge that is by virtue of the compromise or arrangement to cease to have effect.

(7) A copy of the order passed by the Commission under this section sanctioning the reconstruction, the amalgamation or division, duly certified by an authorized officer of the Commission shall be forwarded to the registrar within seven days from the date of the order.

(8) In this section “property” includes property, rights and powers of every description; and “liabilities” includes duties.

(9) In this section the expression "transferee company" does not include any company other

than a company within the meaning of this Act, and the expression "transferor company" includes any body corporate, whether a company within the meaning of this Act or not.

283. Notice to be given to registrar for applications under section 279 and 282. —

The Commission shall give notice of every application made to it under sections 279 to 282 to the registrar and shall take into consideration the representation if any, made to it by the registrar before passing any order under any of these sections.

284. Amalgamation of wholly owned subsidiaries in holding company. —

(1) A company and one or more other companies that is or that are directly or indirectly wholly owned by it, may amalgamate and continue as one company (being the company first referred to) without complying with sections 279 to 282, if—

(a) the scheme of amalgamation is approved by the board of each amalgamating company; and

(b) each resolution provides that—

(i) the shares of each transferor company, other than the transferee company, will be cancelled without payment or other consideration; and

(ii) the board is satisfied that the transferee company will be able to pay its debts as they fall due during the period of one year immediately after the date on which the amalgamation is to become effective and a declaration verified by an affidavit to the effect will be filed with the registrar; and

(iii) the person or persons named in the resolution will be the director or directors of the transferee company.

(2) Two or more companies, each of which is directly or indirectly wholly owned by the same person, may amalgamate and continue as one company without complying with section 279 or section 282 if —

(a) the scheme of amalgamation is approved by a resolution of the board of each amalgamating company; and

(b) each resolution provides that—

(i) the shares of all the transferor companies will be cancelled without payment or other consideration; and

(ii) the board is satisfied that the transferee company will be able to pay its debts as they fall due during the period of one year immediately after the date on which the amalgamation is to become effective and a declaration verified by an affidavit to the effect will be filed with the registrar; and

(iii) the person or persons named in the resolution will be the director or directors of the transferee company.

(3) The board of each amalgamating company must, not less than twenty days before the

amalgamation is proposed to take effect, give written notice of the proposed amalgamation to every secured creditor of the company.

(4) The resolutions approving an amalgamation under this section, taken together, shall be deemed to constitute an amalgamation proposal that has been approved.

(5) The transferee company shall file a copy of the scheme so approved in the manner as may be specified, with the registrar where the registered office of the company is situated.

(6) Any contravention or default in complying with requirements of this section shall be an offence liable to a penalty of level 2 on the standard scale.

285. Power to acquire shares of members dissenting from scheme or contract. –

(1) Where a scheme or contract involving the transfer of shares or any class of shares in any company (in this section referred to as "the transferor company") to another company (in this section referred to as "transferee company") has, within one hundred and twenty days after the making of the offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary), the transferee company may, at any time within sixty days after the expiry of the said one hundred and twenty days, give notice in the specified manner to any dissenting shareholder that it desires to acquire his shares; when such a notice is given the transferee company, shall, unless, on an application made by the dissenting shareholder within thirty days from the date on which the notice was given, the Commission thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company:

Provided that, where shares in the transferor company of the same class as the shares whose transfer is involved are already held as aforesaid by the transferee company to a value greater than one-tenths of the aggregate of the value of all the shares in the company of such class, the foregoing provisions of this sub-section shall not apply, unless—

(a) the transferee company offers the same terms to all holders of the shares of that class (other than those already held as aforesaid) whose transfer is involved; and

(b) the holders who approve the scheme or contract, besides holding not less than nine-tenths in value of the shares (other than those already held as aforesaid) whose transfer is involved, are not less than three-fourths in number of the holders of those shares.

(2) Where, in pursuance of any such scheme or contract as aforesaid, shares, or shares of any class, in a company are transferred to another company or its nominee, and those shares together with any other shares or any other shares of the same class, as the case may be, in the first mentioned company held at the date of the transfer by, or by a nominee for, the transferee company or its subsidiary comprise nine-tenths in value of the shares, or shares of that class, as the case may be, in the first-mentioned company, then—

(a) the transferee company shall, within thirty days from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement), give notice of that fact in the specified manner to the holders

of the remaining shares or of the remaining shares of that class, as the case may be, who have not assented to the scheme or contract; and

(b) any such holder may, within ninety days from the giving of the notice to him, require the transferee company to acquire the shares in question; and where a shareholder gives notice under clause (b) with respect to any shares, the transferee company shall be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders were transferred to it, or on such other terms as may be agreed, or as the Commission on the application of either the transferee company or the shareholders thinks fit to order.

(3) Where a notice has been given by the transferee company under sub-section (1) and the Commission has not, on an application made by the dissenting shareholder, made an order to the contrary, the transferee company shall, on the expiration of thirty days from the date on which the notice has been given or, if an application to the Commission by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which, by virtue of this section, that company is entitled to acquire; and the transferor company shall—

(a) thereupon register the transferee company as the holders of those shares; and

(b) within thirty days of the date of such registration, inform the dissenting shareholders of the fact of such registration and of the receipt of the amount or other consideration representing the price payable to them by the transferee company: Provided that an instrument of transfer shall not be required for any share for which a share warrant is for the time being outstanding.

(4) Any sums received by the transferor company under this section shall forthwith be paid into a separate bank account to be opened in a scheduled bank and any such sum and any other consideration so received shall be held by that company in trust for the several persons entitled to the shares in respect of which the said sums or other consideration were or was respectively received.

(5) The following provisions shall apply in relation to every offer of a scheme or contract involving the transfer of shares or any class of shares in the transferor company to the transferee company, namely—

(a) every such offer or every circular containing such offer or every recommendation to the members of the transferor company by its board to accept such offer shall be accompanied by such information as may be specified;

(b) every such offer shall contain a statement by or on behalf of the transferee company disclosing the steps it has taken to ensure that necessary cash will be available;

(c) every circular containing or recommending acceptance of, such offer shall be presented to the registrar for registration and no such circular shall be issued until it is so registered;

(d) the registrar may refuse to register any such circular which does not contain the information required to be given under clause (a) or which sets out such information in a manner likely to give a misleading, erroneous or false impression; and

(e) an appeal shall lie to the Commission against an order of the registrar refusing to register any such circular.

(6) The Commission or any party may make a reference to the Court, on any matter including but not limited to the determination of liabilities of the company or incidental thereto as provided under sections 279 to 285, for necessary orders.

(7) Whoever issues a circular referred to in clause (c) of sub-section (5) which has not been registered shall be punishable to a penalty of level 1 on the standard scale.

(8) Notwithstanding anything contained in sections 279 to 283 and 285, the powers of the Commission shall be exercised by the Court for such companies or class of companies or having such capital, as may be notified by the concerned Minister-in-Charge of the Federal Government.

B. Relevant Notifications

The powers of the Commission conferred under the Act to sanction compromises, arrangements and reconstructions (except in the case of small sized companies and public sectors companies to the extent of the Federal Government) have been delegated to the Courts vide notifications issued by the Government of Pakistan. The said notifications are reproduced for reference as follows:

S.R.O. 1351 (I)/2023.

In exercise of the powers conferred by sub-section (8) of section 285 of the Companies Act, 2017 (XIX of 2017), and in supersession of the Finance Division's Notification No. S.R.O. 840(I)/2017, dated the 17th day of August, 2017 and Notification No. S.R.O. 1126(I)/2019, dated the 23rd day of September, 2019, the Minister-in-Charge of the Federal Government is pleased to notify that the powers of the Securities & Exchange Commission of Pakistan conferred by sections 279 to 283 and 285 of the said Act in respect of public interest companies, large sized companies and medium sized companies classified under the Third Schedule to the said Act shall be exercised by the Company Bench of High Court having jurisdiction under the said Act except public sector companies to the extent of the Federal Government.

A notification was also issued by the Commission to make relevant amendments in the Seventh Schedule to the Act in order to revise the fee for applications received by the Commission for various schemes of arrangement. The relevant amendments revising the fee are being reproduced here for ready reference:

S.R.O. 980 (I)/2022. -

Item	For submission of documents electronically Rs.	For submission of documents in physical form Rs.
(7A) For filing, registering or recording any document notifying particulars relating to a		

scheme of amalgamation and allied documents prescribed under section 284, the following fee to be determined in accordance with the classification of the transferee company given in the Third Schedule to this Act namely:-		
Small Sized Company	100,000	200,000
Public Sector Company, as defined in the Act, owned to the extent of the Federal Government	50,000	100,000
Any other Public Sector Company	100,000	200,000
Medium Sized Company	250,000	500,000
Large Sized Company	350,000	700,000
Public Interest Company, excluding Public Sector Company	500,000	1,000,000

Item	For submission of documents electronically Rs.	For submission of documents in physical form Rs.
(22) sanctioning compromise or arrangement including reconstruction, amalgamation or division under section 279 to 282, the following fee to be determined according to the classification of the transferee company, given in the Third Schedule, namely:-		
Small Sized Company	250,000	500,000
Public Sector Company, as defined in the Act, directly or indirectly wholly owned by Federal Government	200,000	400,000

C. Disclaimer

This guide has been developed with the intent to facilitate and create awareness about the requirements relating to scheme of arrangement. The contents of this guide do not constitute an approval, a legal opinion, legal vetting or professional advice and are not a replacement of the applicable regulatory framework and should not be treated as binding on the Commission in any way. Readers are encouraged to seek professional advice, if required, as it is the responsibility of the persons who are subject to provisions of the law to determine their obligations/responsibilities under the applicable law. These guidelines do not absolve the responsibility of board of directors, officers of the company, or company itself in accordance with the requirements of law. The Commission gives no guarantee and assumes no liability for any error or omissions of information and no one can use the given information for any claim, demand or cause of action.