

GOVERNMENT OF PAKISTAN
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

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Islamabad, the 3rd April, 2018

NOTIFICATION

S.R.O. 423 (I)/2018.- In exercise of the powers conferred by section 238 read with section 510 of the Companies Act, 2017 (XIX of 2017) (the Act), and in supersession of the notification S.R.O. 1227/2005, dated December 12, 2005, the Securities and Exchange Commission of Pakistan (the Commission), is pleased to direct that a company shall, where applicable, while issuing notice of its general meeting, where a special business is to be transacted, in terms of the below referred sections of the Act, annex a statement, pursuant to sub-section (3) of section 134 of that Act, detailing, following information at the minimum, as applicable upon the Company, namely;-

A. MATERIAL FACTS TO BE DISCLOSED WHERE SPECIAL RESOLUTION OF MEMBERS IS REQUIRED FOR:

1. Change of name by a company (section 12)

- i) Reasons and effects of change of name by the company;
- ii) Proposed new name of the company;
- iii) Confirmation that the proposed name is not incommensurate with the principal line of business of the company; and
- iv) If change of name is due to diversification of main business activities or entering a new geography etc. same shall be disclosed.

Change in registered office of company (section 21)

- i) Information on the existing registered office and new proposed registered office;
- ii) Reasons and effects of change in registered office;
- iii) Geographical dispersion of the members of the company (of total as well as of those who attended last three annual general meetings);
- iv) A brief cost-benefit analysis; and
- v) Information on inquiry, inspection or investigation, which has been initiated against the company or prosecution pending against the company, if any.

2. Alteration of memorandum with respect to principal line of business (section 32(b))

- i) Existing and proposed principal line of business of the company;
- ii) Reasons for change in the principal line of business;
- iii) Benefits likely to accrue to the company and its members from the proposed change;

- iv) Financial projections, including, inter alia, project cost for new proposed principal business, sources of funds to cover the project cost, revenues, expenses etc. along with underlying assumptions;
- v) Impact on existing line of business of the company;
- vi) Expected time period when proposed change is expected to be implemented; and
- vii) A statement by the board that the proposed change will not be detrimental to the interest of the company or its members as a whole.

3. Alteration of memorandum - Other (section 32)

- i) Comparative analysis of existing clause with the proposed alteration along with the reasons and justification of the proposed change;
- ii) Reasons of change or alteration in the memorandum of association of the company; and
- iii) A statement by the board that the proposed alterations are in line with the applicable provisions of the law and regulatory framework.

4. Alteration of articles (section 38)

- i) Comparative analysis of existing clause with the proposed amendment along with reasons for the change;
- ii) Reasons for each change in the articles of association of the company; and
- iii) A statement by the board that the proposed alterations are in line with the applicable provisions of the law and regulatory framework.

5. Conversion of public company into private company and vice-versa (section 46)

- i) Reasons for change in status of the company;
- ii) Arrangement for acquisition of interest of members in excess of maximum number of members in terms of the requirements of clause (49) of sub-section 1 of section 2 of the Act, if applicable;
- iii) Value at which shares of members shall be acquired, if applicable;
- iv) Effect on business operations of the company of the proposed conversion; and
- v) Undertaking by the board that the company has not defaulted in filing of annual returns or financial statements or any other document / penalty due for filing with the registrar or the Commission.

6. Conversion of status of private company into a single-member company (section 47)

- i) Reasons for change in status of the company;
- ii) Arrangement for acquisition of interest of members in excess of maximum number of members in terms of the requirements of clause (49) of sub-section 1 of section 2 of Act, if applicable;
- iii) Value at which shares of members shall be acquired, if applicable;
- iv) Effect on business operations of the company of the proposed conversion; and

- v) Undertaking by the board that the company has not defaulted in filing of annual returns or financial statements or any other document / penalty due for filing with the registrar or the Commission.

7. Conversion of status of unlimited company as limited company and vice-versa (section 48)

- i) Exact information on change in status of the company from unlimited to a limited company or vice versa;
- ii) Information on the changes in the memorandum and articles of association of the company;
- iii) Information on Commission's approval in case of change from unlimited to limited company;
- iv) Reasons for change in status of the company;
- v) Effect on business operations of the company of the proposed conversion; and
- vi) Details of litigations involving the Company, its directors and officers, if any.

8. Conversion of a company limited by guarantee to a company limited by shares and vice-versa (section 49)

- i) Exact information on conversion of a company limited by guarantee to a company limited by shares or vice versa;
- ii) Information on the changes in the memorandum and articles of association of the company;
- iii) Information on Commission's approval in case of conversion of a company limited by guarantee to a company limited by shares;
- iv) Reasons for change in status of the company;
- v) Amount of share capital to be paid by members of the company upon conversion, if applicable;
- vi) Maximum amount to be contributed by company's members in the event of winding up, if applicable; and
- vii) Effect on business operations of the company of the proposed conversion.

9. Altering authorised share capital (section 85)

- i) Reasons for alteration in authorised share capital;
- ii) Existing authorised share capital Rs. [denomination] divided into [number of shares] having face value of Rs. [denomination per share]; and
- iii) Amount with which authorised share capital is proposed to be increased Rs. [denomination] divided into [number of shares] shares of [denomination per share] each.

10. Reduction of share capital (section 89)

- i) Reasons and purpose of reduction of share capital;
- ii) Brief details of terms and conditions associated with reduction of share capital;
- iii) The amount and number of shares proposed to be cancelled or paid off;

- iv) Effect of reduction of share capital along with comparison of existing share capital and post cancellation share capital;
- v) Details of assets, liabilities and shareholders' equity as per company's latest annual financial statements and subsequent interim financial statements, if any;
- vi) List of creditors of the company along with information on nature and amount involved, if substantial or material;
- vii) Brief details of qualifications, reservations or adverse remarks or disclaimer, if any, made by the auditor in his audit report on the latest annual financial statements relevant to the reduction of share capital; and
- viii) Details of any pending inspection, inquiry or investigation against the company under the Act.

11. Making liability of directors unlimited in case of a limited company (section 99)

- i) Reason for making the liability of directors unlimited;
- ii) Benefits likely to accrue to the company and its members;
- iii) Potential impact of making liability of directors unlimited on the company;
- iv) Details of assets, liabilities and shareholders' equity as per company's latest annual financial statements and subsequent interim financial statements, if any;
- v) Names of directors whose liability shall become unlimited consequent to the alteration of the memorandum;
- vi) Names of directors whose consent is required and obtained; and
- vii) A brief of terms and conditions of the proposed alteration for making the liability of director unlimited.

12. Removal of chief executive by special resolution (section 190)

- i) Name of chief executive;
- ii) Reasons for removal of chief executive;
- iii) Information on the terms and conditions of appointment of chief executive and remaining term of his office;
- iv) A brief of the terms and conditions of removal of the chief executive from his office, compensation for removal, if any, and its impact on the company;
- v) Recommendation for legal recourse, if any, against chief executive; and
- vi) Details of litigations, if any, involving chief executive.

13. Removal of auditor (section 246 (5))

- i) Name of auditor(s) to be removed;
- ii) Reasons and basis of removal of the auditor(s);
- iii) Any other facts relevant to removal;
- iv) Whether or not any representation from the auditors to be removed is received by the company;
- v) Whether or not any notice has been received for removal of auditor(s) from member(s). Where such notice is received from member(s), the date of receipt of the notice and shareholding details (numbers, percentage etc.) of the member(s) giving such notice; and

- vi) Details of other services rendered/being rendered by such auditors to the company, and whether or not such services will continue to be provided by the auditors so removed, if any.

14. Passing special resolution for investigation of company's affairs (section 257)

- i) Full details regarding the circumstances, based on which the investigation is required;
- ii) Details of aspects of the company's affairs which need to be investigated;
- iii) Details of record and evidence relating to the aspects of the company that need to be investigated; and
- iv) Detail of any provisions of the Act violated by the company meriting the investigation into its affairs.

15. Passing special resolution for winding up of a company by court (clause (a) of section 301)

- i) Full details regarding circumstances which merit winding up of the company;
- ii) Justification of winding up of the company;
- iii) Latest financial position of the company;
- iv) Brief details of qualifications, reservations, adverse remarks or disclaimer made by the auditor in his audit report on the latest annual financial statements, if any; and
- v) Statement from the directors of the company that they have evaluated all the circumstances and options and their assessment on the proposed winding up of the company.

16. Passing special resolution that a company may be wound up voluntarily (clause (b) of section 347)

- i) Full details regarding circumstances which merit winding up of the company;
- ii) Justification of winding up of the company;
- iii) Latest financial position of the company;
- iv) Brief details of qualifications, reservations, adverse remarks or disclaimer made by the auditor in his audit report on the latest annual financial statements, if any; and
- v) Statement from the directors of the company that they have evaluated all the circumstances and options and their assessment on the proposed winding up of the company.

B. MATERIAL FACTS TO BE DISCLOSED WHERE ORDINARY RESOLUTION IN RESPECT OF SPECIAL BUSINESS IS REQUIRED FOR:

1. Determining director's remuneration for performing extra services (section 170)

- i) Details of the extra services performed or to be performed by the director;
- ii) Statement on suitability of the selected director for performing extra services;
- iii) Remuneration of the director, including perks and benefits, pecuniary or otherwise for the extra services;
- iv) Any other benefits or profits arising consequent to performing of extra services by the director;
- v) Benefits to the company and its members as a result of such extra services to be performed by the director; and
- vi) Period of performing such extra services.

2. Determining terms of appointment of chief executive by the company in a general meeting (section 188)

- i) A brief about terms of appointment;
- ii) Monetary value of remuneration, perks and other entitlement providing details of:
 - (a) Date and period of appointment;
 - (b) Salient features of contract for appointment;
 - (c) Fixed monthly/annual remuneration;
 - (d) Variable monthly / annual remuneration;
 - (e) Fixed and variable annual bonuses;
 - (f) Monetary value of terminal benefits on annualized basis;
 - (g) Monetary value of other perks e.g. travel allowance, medical allowance, reimbursements, conveyance, servants etc.; and
 - (h) Other entitlements employee stock option, buy back of car, insurance etc.; and
- iii) Non-monetary entitlements, perks and any other entitlement benefits.

3. Seeking sanction of the general meeting for office of profit of a director (section 171 (1)(c)(i))

- i) Details of the office of profit proposed to be held by the director;
- ii) Brief job description of the office to be held by the director;
- iii) Remuneration of the director, including perks and benefits, pecuniary or otherwise;
- iv) Any other benefits or profits arising out of such office of profit for the director;
- v) Benefits to the company and its members as a result of such office of profit to be held by the director; and
- vi) Period of holding of such office.

4. Approval of loans, guarantees etc. to directors of a company, of a holding company or any of his relative (section 182)

- i) In case of loan:
 - a) Name of the person;
 - b) Description and purpose of the loan;
 - c) Amount of loan;
 - d) Rate of interest, mark up etc.;
 - e) Security if any, obtained/ to be obtained by the company;
 - f) Repayment schedule;
 - g) Disclosure regarding mandatory approval of the Commission, in case of a listed company;
 - h) Other principal terms and conditions; and
 - i) A brief on company's policy regarding the loans for directors or their relatives.
- ii) In case of providing guarantee or security:
 - a) Detail of the person in whose favor guarantee or security is to be provided;
 - b) Details of the guarantee or security to be given by the company including the amount of liability in case of default by the borrower;
 - c) Guarantee or security fee to be charged by the company to the director, if any;
 - d) Security obtained/ to be obtained by the company against the guarantee, if any;
 - e) Principal terms and conditions of guarantee or security; and
 - f) A brief on company's policy regarding the loans for directors or their relatives.

5. Special business relating to members' approval for sale, lease or disposal of the undertaking or sizeable part thereof or sale / disposal of subsidiary that is to be transacted under clause (a) or (b) of sub-section (3) of section 183 of the Act

- I. In case of sale, lease or disposal of sizeable part of undertaking:
 - i) Detail of assets to be sold, leased or disposed of shall include the following:
 - a) Description/Name of asset;
 - b) Acquisition date of the asset;
 - c) Cost;
 - d) Revalued amount and date of revaluation (if applicable);
 - e) Book value;
 - f) Approximate current market price/fair value;
 - g) In case of sale, if the expected sale price is lower than book value or fair value, then the reasons thereof;
 - h) In case of lease of assets, tenure, lease rentals, increment rate; mode/basis of determination of lease rentals; and other important terms and conditions of the lease;
 - i) Additional information in case of disposal of land:
 - (i) Location;
 - (ii) Nature of land (e.g. commercial, agriculture, etc); and
 - (iii) Area proposed to be sold.

- ii) The proposed manner of disposal of the said assets.
 - iii) In case the company has identified a buyer, who is a related party the fact shall be disclosed in the statement of material facts.
 - iv) Purpose of the sale, lease or disposal of assets along with following details:
 - a) Utilization of the proceeds received from the transaction;
 - b) Effect on operational capacity of the company, if any; and
 - c) Quantitative and qualitative benefits expected to accrue to the members.
- II. In case of sale or disposal of the undertaking of the company that may lead to closure of business or winding up of a company, the following information shall be provided in addition to the information as required in Para I above:
 - i) A brief containing all the necessary details of viable alternate business plan duly authenticated by the board; including total cost of the proposed future business plan and means of financing;
 - ii) Expected time of completion of the proposed project; and
 - iii) The mode of disposal in this case shall be through tender in newspapers.
- III. In case of sale or disposal of subsidiary of the company:
 - i) Name of the subsidiary;
 - ii) Cost and book value of investment in subsidiary;
 - iii) Total market value of subsidiary based on value of the shares of the subsidiary company:
 - a) In case of listed subsidiary company: quoted price of shares of subsidiary on day of decision of the board for disposal;
 - b) In case of non-listed subsidiary: value determined by a registered valuer, who is eligible to carry out such valuation along with name of the valuer.
 - iv) Net worth of subsidiary as per latest audited financial statements and subsequent interim financial statements, if available;
 - v) Total consideration for disposal of investment in subsidiary, basis of determination of the consideration and its utilization;
 - vi) Quantitative and qualitative benefits expected to accrue to the members.
- IV. Where a listed company seeks members' approval for sale or disposal of the undertaking of the company that may lead to closure of business or winding up, the following requirements shall be applicable:
 - i) The company shall simultaneously dispatch a certified copy of the viable alternate business plan duly authenticated by the board along with the

notice of the general meeting to the head office of the Securities and Exchange Commission of Pakistan, through fax or email and courier service on the same day it is dispatched to the members;

- ii) The company shall make available copy of viable alternate business plan duly authenticated by the board for members' inspection in the general meeting; and
 - iii) The company shall, in directors' report attached to all subsequent interim and annual financial statements issued after the members' approval, provide an update with regard to status of disposal of assets and implementation of the business plan. With respect to disposal of assets, all the relevant details including but not limited to book value of assets sold, sale proceeds, gain/(loss) on disposal and utilization of disposal proceeds along with book value of remaining assets to be sold shall be provided.
- V. The directors of a company shall, while presenting resolution for seeking members' approval for sale or disposal of subsidiary or of undertaking that may lead to closure of business or winding up of a company, submit an undertaking to the members of the company that they have carried out necessary due diligence for the sale or disposal. The duly signed recommendations of the due diligence report shall be made available to the members for inspection in the general meeting called for approval of the resolution.

6. Approval of arrangement for non-cash transactions involving directors or persons connected with them (section 211)

- i) Names of directors or connected persons in respect of whom the arrangement is being approved;
- ii) Particulars and description of arrangement;
- iii) Value of assets involved in the arrangement duly calculated by a registered valuer;
- iv) In case of listed shares involved in the arrangement, market value of such shares;
- v) In case of assets being disposed of by the company, carrying amount, impairment, if any, and break-up value as per financial statements;
- vi) Reasons for acquisition or disposal of assets otherwise than cash;
- vii) Details of consideration for the assets acquired and disposed of; and
- viii) Benefits likely to accrue to the company and its members from such an arrangement.

7. Authorizing representative by a holding company for inspecting books of accounts of subsidiary companies (section 230)

- i) Name of the person proposed to be authorised to inspect books of account of the subsidiary(ies);
- ii) Reasons for ordering inspection of books of accounts of the subsidiary(ies);
- iii) Scope and period to be covered in the inspection;
- iv) Terms of reference of the proposed inspection; and

- v) Period within which report on inspection is to be submitted by the authorized representative.


8. Passing resolution that the company may be wound up voluntarily (clause (a) of section 347)

- i) Detail of event in respect of which articles provide that company should be dissolved;
- ii) Justification of winding up of the company;
- iii) Information of relevant clause of the articles of association in terms of which winding up is required;
- iv) Information on the expiry of the period or occurrence of event, as the case may be, as a result of which winding up has been provided for in the articles;
- v) Latest financial position of the company;
- vi) Brief details of qualifications, reservations, adverse remarks or disclaimer made by the auditor in his audit report on the latest annual financial statements, if any;
- vii) Statement from the directors of the company that they have evaluated all the circumstances and options and their assessment on the proposed winding up of the company; and
- viii) Amount likely to accrue to members from the proposed winding up.

C. In respect of all businesses to be transacted at the general meeting

- 1. A listed company shall simultaneously dispatch a copy of the notice of the general meeting in which a special business is to be transacted along with the statement of material facts in the head office of the Securities and Exchange Commission of Pakistan, through fax or email and courier service on the same day it is dispatched to the members.
- 2. In respect of all the special businesses mentioned hereinabove, a company shall disclose the nature and extent of interest, if any, therein of every director, whether directly or indirectly.
- 3. A company shall, in addition to the minimum information specified hereinabove and that required by the Act or rules or regulations made thereunder, provide in the notice all the material information relevant to the special business to be transacted in the meeting that is necessary for the members to make a well-informed decision.

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(Bilal Rasul)
Secretary to the Commission