STATUTORY NOTIFICATION (S.R.O)
Government of Pakistan
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

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NOTIFICATION

S.R.O. 300 (I)/2001.- In exercise of the powers conferred by section 506 of the Companies Ordinance, 1984 (XLVII of 1984), and clause (b) of section 43 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997), the Securities and Exchange Commission of Pakistan, with the approval of the Federal Government, hereby makes the following rules, the same having been published previously as required by the said section 506, namely:-.

1. **Short title, commencement and application.**
    i. These rules may be called the Public Companies (Employees Stock Option Scheme) Rules, 2001.
    ii. They shall come into force at once.
    iii. They shall apply to all public companies.
2. **Definitions.**-
    i. In these rules, unless there is anything repugnant in the subject or context,-
        a. "Commission" means the Securities and Exchange Commission of Pakistan;
        b. "Compensation Committee" means a Compensation Committee constituted under rule 4;
        c. "employee" means-
            i. a regular employee of a company working in Pakistan or out of Pakistan;
            ii. an executive director who is on pay roll of a company; or
            iii. a chief executive who is on pay roll of a company;
        d. "employees' compensation" means the total cost incurred by a company towards gross salary of its employees;
        e. "exercise" means making of an application by an employee to a company for issue of shares against option vested in him in pursuance of a Scheme;
        f. "exercise period" means the time period after vesting within which an employee should exercise his right to apply for shares against an option vested in him in pursuance of the Scheme;
        g. "exercise price" means the price payable by an employee for exercising an option granted to him in pursuance of a Scheme;

h. "independent director" means a director of a company, not being a whole time director and who is neither a promoter nor belongs to a promoter group;

i. "market price" in relation to shares on a given date, means the closing price of the shares on that date on the stock exchange on which the shares of a company are listed;
Explanation.- If the shares are listed on more than one stock exchange, but quoted only on one stock exchange on a given date, then the price on that stock exchange shall be considered. If the share price is quoted on more than one stock exchanges, then the stock exchange where there is highest trading volume on that date shall be considered. If share price is not quoted on a given date, then the share price on the last trading day shall be considered.

j. "option" means a right but not an obligation granted to an employee in pursuance of a Scheme to apply for shares of a company at a pre- determined price;

k. "promoter" means-
   i. the person or persons who are in over-all control of a company;
   ii. the person or persons who are instrumental in the formation of a company or the shares offering to public; or
   iii. the person or persons named in the offer document as directors:
   Provided that a director or an officer of a company, if he is acting as such only in his professional capacity, shall not be deemed to be a promoter;
   Explanation.- Where a promoter of a company is a body corporate, the promoters of that body corporate shall also be deemed to be promoters of the company.

l. “Scheme” means the Employees Stock Option Scheme approved by the Commission and introduced under these rules;

m. "share" means equity shares and securities convertible into equity shares and shall include American Depository Receipts (ADRs), Global Depository Receipts (GDRs) or other depository receipts representing underlying equity shares or securities convertible into equity shares;

n. "vesting" means exercise of right to apply for shares of a company; and

o. "vesting period" means the period during which the vesting of an option granted to an employee in pursuance of a Scheme takes place.

p. In the case of investment in the shares of listed companies, it shall be made only where such companies--

ii. All other words and expressions used but not defined in these rules shall have the same meaning as are assigned to them in the Securities and Exchange Ordinance, 1969 (XVII of 1969), or the Companies Ordinance, 1984 (XLVII of 1984).

3. **Ineligibility to participate in a Scheme.**- Only regular employees who are on the pay roll of a company shall be eligible to participate in a Scheme.

4. **Compensation Committee.**-

. No Scheme shall be offered unless the company constitutes a Compensation Committee for administration and superintendence of the Scheme.

i. The Compensation Committee shall be a Committee appointed by the Board of Directors but shall not include the directors who can be classified as employees of a company or are on its pay roll.

5. **Powers and functioning of Compensation Committee.**-

. The Compensation Committee shall, inter alia, formulate the detailed terms and conditions of a Scheme including the following, namely:-

a. quantum of option to be granted under a Scheme to each employee and in aggregate;
b. conditions under which option vested in an employee may lapse in case of termination of employment for misconduct;
c. exercise period within which an employee should exercise option and that option shall lapse on failure to exercise the same within the exercise period;
d. specified time period within which an employee shall exercise vested options in the event of termination from service or resignation;
e. right of an employee to exercise all options vested in him at one time or at various points of time within an exercise period;
f. procedure for making a fair and reasonable adjustment to the number of options and to an exercise price in case of rights issues, bonus issues and other corporate actions;
g. grant, vesting and exercise of option in case of an employee who is on long leave; and
h. procedure for cashless exercise of options.

i. The Compensation Committee shall make suitable policies and systems to ensure that there is no violation of insider trading provisions of the Securities and Exchange Ordinance, 1969 (XVII of 1969), and the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997), or the rules made under those laws.

6. **Shareholders' approval.**-

. No Scheme shall be offered to employees of a company unless shareholders of the company approve the Scheme by passing a special resolution in the general meeting

i. The statement of facts annexed to a notice and resolution proposed to be passed in a general meeting for a Scheme shall, inter alia, contain the following information, namely:-

a. total number of options to be granted;
b. identification of classes of employees entitled to participate in the Scheme;
c. requirements of vesting and period of vesting;
d. maximum period within which any option shall be vested;
e. exercise price or pricing formula;
f. appraisal process for determining eligibility of an employee to the Scheme;
g. maximum number of options to be issued per employee and in aggregate; and
h. a statement to the effect that the company shall conform to the accounting policies specified in rule 13 .

ii. Approval of shareholders by way of separate resolution in a general meeting shall be obtained by a company in case of-

a. grant of option to employees of a subsidiary or holding company; and
b. grant of option to identified employees, during any one year, equal to or exceeding one per cent of the issued capital (excluding outstanding conversions) of the company at the time of grant of option.

7. **Variation of terms of a Scheme.**

. A company shall not vary the terms of a Scheme in any manner which may be detrimental to the interests of its employees.

i. A company may by special resolution in a general meeting vary the terms of a Scheme offered pursuant to an earlier resolution of a general body but not yet exercised by its employees provided such variation is not prejudicial to the interests of the option holders.
ii. The provisions of sub-rule (3) of rule 6 shall apply to such variation of terms as they do to the original grant of option.

8. **Pricing.**- A company granting option to its employees pursuant to a Scheme shall have the freedom to determine the exercise price subject to conforming to the accounting policies specified in rule 13.
9. **Lock-in period and rights of an option-holder.**-

. There shall be a minimum period of one year between the grant of option and vesting of option.

i. A company shall have the freedom to specify the lock-in period for the shares issued pursuant to an exercise of option.
ii. An employee shall not have right to receive any dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of option granted to him, till shares are issued to him on exercise of option.

10. **Consequence of failure to exercise option.**- In case of failure to exercise the option, the right granted shall lapse.
11. **Option not transferable.**-

. An option granted to an employee shall not be transferable to any other person except to an entitled employee of a company

i. Under the cashless system of exercise, a company may itself fund the payment of exercise price which shall be adjusted against the sale proceeds of some or all the shares.
ii. An option granted to an employee shall not be pledged, hypothecated, mortgaged or otherwise alienated in any other manner.
iii. In the event of death of an employee while in employment of a company, all options granted to him till the date of his death shall vest in his legal heirs or nominees.
iv. In case an employee suffers a permanent incapacity while in employment of a company, all options granted to him, as on the date of permanent incapacitation, shall vest in him on that day.
v. In the event of resignation or termination of service of an employee, all options not vested as on that day shall expire:
vi. Provided, the employee shall, subject to the terms and conditions of a Scheme formulated in terms of rule 5, be entitled to retain all the vested options.

12. **Disclosure in the Board of Directors' Report.**- The Board of Directors, shall, inter alia, disclose in the annexure to the Annual Report, the following details of a Scheme, namely:-

. options granted;

i. pricing formula;
ii. options vested;
iii. options exercised;
iv. total number of shares arising as a result of exercise of option;
v. options lapsed;
vi. variation of terms of options;
vii. money received against exercise of options;
viii. employee-wise details of options granted to
    a. senior managerial personnel;
    b. any other employee who receives a grant in any one year of option amounting to five per cent or more of option granted during that year; and
    c. identified employees who were granted option, during any one year, equal to or exceeding one per cent of the issued capital (excluding outstanding conversions) of a company at the time of grant; and
ix. diluted earnings per share pursuant to issue of shares on exercise of option calculated in accordance with International Accounting Standard No. 33

13. **Accounting policies.**- Every company that has passed a special resolution for a Scheme under these rules, shall comply with the accounting policies specified in the Schedule to these rules.
14. **Certificate from auditors.**- In the case of every company that has passed a special resolution for a Scheme, the Board of Directors shall at each annual general meeting place before the shareholders, a certificate from the auditors of the company that the Scheme has been implemented in accordance with these rules and in accordance with the resolution of the company passed in a general meeting.
15. **Options outstanding at public issue.**-

. If any option is outstanding at the time of an initial public offering by a company, the promoters' contribution shall be calculated with reference to the enlarged capital which would arise on exercise of all vested options.

i. If any options granted to employees in pursuance of a Scheme are outstanding at the time of initial public offering, the offering document of a company shall disclose all the information specified in rule 12.

16. **Preferential allotment.**- Nothing in these rules shall apply to shares issued to employees at the time of public offering through the prospectus of a company.
17. **Relaxation of rules:**- Where the Commission is satisfied that it is not practicable to comply with any requirement of these rules in a particular case or class of cases, the Commission may, for reasons to be recorded in writing, relax such requirement subject to such conditions as it may deem fit.
18. **Penalty:** Whoever fails or refuses to comply with, or contravenes any provision of these rules , or knowingly and willfully authorizes or permits such failure, refusal or contravention, shall, in addition to any other liability under the Companies Ordinance , 1984 (XLVII of 1984), be also punishable with a fine not exceeding two thousand rupees, and in case of continuing failure, refusal or contravention, to a further fine not exceeding one hundred rupees

for every day after the first during which such failure, refusal or contravention continues.

THE SCHEDULE

[See rule 13]

ACCOUNTING POLICIES FOR A SCHEME

0. In respect of options granted during any accounting period, the accounting value of the options shall be treated as another form of employee compensation in the financial statements of a company.
    1. The accounting value of options shall be equal to the aggregate, over all employee stock options granted during the accounting period, of the fair value of the options.

       Explanation.- For the purposes of paragraph 2-
        a. fair value means an option discount, or, if a company so chooses, the value of an option using the Black Scholes formula or other similar valuation method; and
        b. option discount means the excess of market price of the share at the date of grant of an option under a Scheme over exercise price of the option (including up-front payment, if any).
2. Where an accounting value is accounted for as employee compensation in accordance with paragraph 2, the amount shall be amortised on a straight-line basis over the vesting period.
    3. When an unvested option lapses by virtue of an employee not conforming to the vesting conditions after the accounting value of an option has already been accounted for as employee compensation, this accounting treatment shall be reversed by a credit to employee compensation expense equal to the amortized portion of the accounting value of the lapsed options and a credit to deferred employee compensation expense equal to the unamortized portion
    4. When a vested option lapses on expiry of an exercise period, after the fair value of an option has already been accounted for as employee compensation, this accounting treatment shall be reversed by a credit to employee compensation expense.

[No.1(25)CF/POL/99]

(ABDUL HALEEM JADRAN)

Joint Director