



Securities and Exchange Commission of Pakistan

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for

Capital Issue by Unlisted Companies

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Email address for submission of feedback:
zainab.kazi@secp.gov.pk

Postal address for submission of feedback:
Registrar of Companies
Securities and Exchange Commission of Pakistan
NIC Building, 63 Jinnah Avenue
Blue Area, Islamabad-44000

Corporate Registry Department
Licensing and Registration Division

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CAPITAL ISSUE GUIDELINES FOR UNLISTED COMPANIES

Introduction:

A company may be required to issue further shares for several reasons including but not limited to the following:

- i. To meet the financial needs of the company such as to pay off the debt;
- ii. To expand the business operations of the company such as development of new market, products etc.;
- iii. To diversify the ownership structure of the company;
- iv. To meet the regulatory requirements of different regulators;
- v. Companies may also issue shares under the Employees Stock Option to compensate its employees etc.

Securities and Exchange Commission of Pakistan (the SECP) has introduced, from time to time, amendments in the Companies Act, 2017 (the Act) and the applicable regulations (now Companies Regulations, 2024] to address the impediments faced by the corporate sector, particularly start-ups and small companies, in raising equity through conventional modes. Instrumental amendments include definition of start-ups; explicit permission for issuance of shares other than right for a consideration other than cash and under Employees Stock Option Scheme by private companies and provision of exit mechanism through buy-back of shares by any company etc.

Sections 58, 70, 81, 82, 83 and 83A of the Act and Chapter-VII of the Companies Regulations, 2024 (the Regulations) deal with the further issue of shares by unlisted companies by way of the following:

- (i) Issuance of shares at a premium;
- (ii) Issuance of shares at a discount;
- (iii) Right issue;
- (iv) Other than right issue;
- (v) Bonus shares;
- (vi) Employees Stock Option;
- (vii) Shares with differential rights including preference shares;

This document is to guide about the requirements pertaining to further issue of shares by an unlisted company under the provisions of the law and relevant regulations.

General Conditions:

- (i) Additional shares cannot be issued beyond the authorized capital of the company. Accordingly, if there is no sufficient cushion available in the authorized capital of the company, the company will initially be required to enhance its authorized capital by altering its Memorandum of Association (MOA) to give effect to increase in authorized capital of the company [ref: regulation 116 of the Regulations].
- (ii) A company having share capital shall issue only fully paid shares which may be of different kinds and classes as provided by its memorandum and articles [ref: section 58 of the Act].

- (iii) Whenever a company having a share capital makes any allotment of its shares, the company shall, within forty-five days thereafter file with the registrar a return (Form 3) of the allotment as per the requirements of section 70 of the Act.
- (iv) The Act in the context of amendments to articles of association, also provides that an alteration that affects the substantive rights or liabilities of members or of a class of members, shall be carried out only if a majority of at least three-fourths of the members or of the class of members affected by such alteration, as the case may be, vote for such alteration [ref: section 38 of the Act].

Procedure/Requirements for Further Issue of Shares under the Law:

A. Issuance of Shares by way of Right:

When the directors of a company decide to issue shares to existing members/shareholders of the company in proportion to their existing shares, the same is considered as a Right Issue. An unlisted company may issue shares by way of right in accordance with the procedure as provided in section 83(1)(a) of the Act read with regulation 108 of the Regulations.

Major Requirements:

- i. The board shall approve the decision to increase share capital in accordance with regulation 108 of the Regulations.
- ii. The shares are offered to the existing shareholders/members of the company through letter of offer, strictly in proportion to the shares already held by the shareholders/members of the company in respective kinds and classes.
- iii. Contents of the letter of offer are covered in section 83(1)(a)(ii) and Form 12 of the Regulations.
- iv. Requirements for signing letter of offer, dispatching information therewith and providing the same to the members of the company and the registrar are provided in section 83 of the Act.
- v. Under regulation 108 of the Regulations, if the board of directors fail, within extended time, to allot shares the unsubscribed right issue will be extinguished.
- vi. Under the same regulation, right issue once announced by the board of an unlisted company shall not be varied, postponed, withdrawn or cancelled except that it will stand extinguished in case it is not completed within the timeline and manner specified within these regulations.
- vii. Valuation requirements for issuance of shares for consideration otherwise than in cash are provided in regulations 113-115 of the Regulations.
- viii. Approval of the SECP is not required for right issue by unlisted companies, except the following:
 - o Where shares are being issued at a discount to the face value pursuant to section 82 of the Act; and
 - o If the whole or any part of the shares offered under this section is declined or is not subscribed, the directors may allot such shares in such manner as they may deem fit within a period of thirty days from the close of the offer. If the directors are unable to allot the unsubscribed portion of right issue within the given thirty days, it shall require approval of the Commission for extension in time not exceeding thirty days for allotment of the said shares. The application for approval of the SECP shall be filed in accordance with section 83(1)(a)(iv) of the Act read with regulation 31 of the Regulations, along with the fee provided in the Seventh Schedule to the Act.

[For detailed requirements, refer to section 83 of the Act read with regulations 31 and 108 of the Regulations]

B. Issuance of Shares by way of other Right:

An unlisted company may also issue shares by way of other than right i.e. to any person. Private companies were initially barred to attract investment from other than existing shareholders. Therefore, SECP, through amendments in the Act has explicitly allowed the private companies to raise funds from investors other than their existing shareholders for financing their working capital requirements, potential products and services linked with technological advancements & their growth. It will expand access-to-finance and the overall outreach for start-ups by enabling them to attract investment from a wider group of investors and in the form of assets, instead of only in cash. This will also substantially benefit the association of persons or partnerships forming a company to transfer their assets to a company and raise equity.

Major Requirements for Public Unlisted Companies:

- i. Board of the company has to recommend and approve the issue as per the requirements provided in regulation 110 of the Regulations.
- ii. Approval of the shareholders/members of the company is required through special resolution, passed by a majority of not less than three-fourths of such members entitled to vote, as are present in person or by proxy at the general meeting.
- iii. Proposed new shares shall rank *pari passu* in all respects with the existing ordinary shares of the company. In case the proposed new shares are different from the issued ordinary shares in any respect, then the board of directors' decision must state the differences in detail.
- iv. Value of any non-cash asset, net worth of undertaking, service, benefit or intellectual property shall be determined by a valuer in accordance with the requirements provided in regulations 113-115 of the Regulations.
- v. The company shall invite claims, if any, on the non-cash assets through advertisement in the widely circulated newspapers both in English and Urdu as per the requirements of regulation 110(iv) of the Regulations.
- vi. In case of issuance of shares for consideration otherwise than in cash, the company shall intimate the Commission, at the time of seeking approval, confirming details of claims received and settled against non-cash asset verified through its statutory auditor along with an affidavit that the information is correct to the best of their knowledge.
- vii. Copy of the consent of the person to whom shares are being issued to be provided;.
- viii. Approval of the Commission is required for public unlisted companies for issuance of shares by way of other than right for cash or for consideration other than cash, for which, an application shall be filed with the SECP in accordance with the requirements of section 83(1)(b) of the Act read with regulations 31 and 110 of the Regulations along with the fee provided in the Seventh Schedule to the Act.

Major Requirements for Private Companies:

- i. The company must be authorized under its articles of association to issue shares to any person either for cash or for consideration other than cash.
- ii. Approval of the members/shareholders of the company is required through special resolution;
- iii. Private company has to meet conditions and requirements as may be notified by the Commission. Currently such conditions and requirements have been notified by the SECP through Notification S.R.O. 1331(1)/2023 dated September 18, 2023.

[For detailed requirements, refer to sections 83(1)(b) of the Act read with regulations 31 and 110 of the Regulations for public unlisted companies; and

Section 83(1)(c) of the Act read with the Notification S.R.O. 1331(1)/2023 dated September 18, 2023 for private companies]

(i) Issuance of Shares at premium:

A company may issue shares at premium in accordance with the requirements of section 81 of the Act either by way of right or other than right. No approval of the Commission is required if such shares are being issued as right issue, otherwise, approval for issuance of shares by way of other than right will be required. For non-cash assets, valuation requirements as provided in regulations 113-115 of the Regulations will be applicable.

If a company issues shares at premium, a sum equal to the aggregate amount or the value of the premiums on those shares must be transferred to an account, called "the share premium account". Where, on issuing such shares, a sum to the share premium account has been transferred, it may be used to write off (a) the preliminary expenses of the company; (b) the expenses of, or the commission paid or discount allowed on, any issue of shares of the company; and (c) in providing for the premium payable on the redemption of any redeemable preference shares of the company. The company may also use the share premium account to issue bonus shares to its members.

[For detailed requirements, please refer to sections 81 and 83 of the Act read with regulations 108 and 110 of the Regulations]

(ii) Issuance of Shares at discount:

An unlisted company may issue shares at a discount, if the company need to raise capital by issue of shares at a price below face value of such share in accordance with section 82 of the Act.

Major Requirements:

- i. Board resolution of the company recommending further issue of shares at discount.
- ii. Issue of shares at a discount must be authorised by special resolution, specifying the number of shares to be issued, rate of discount, not exceeding the limits permissible under this section and price per share proposed to be issued.
- iii. Not less than three years have elapsed since the date on which the company was entitled to commence business.
- iv. A certificate by the Statutory Auditor of the company certifying the calculation of break-up value per share based on assets (revalued not later than 3 years) or per share value based on discounted cash flow, confirming that the offer price per share is not less than the aforementioned break-up value per share.
- v. The share at a discount must be issued within sixty days after the date on which the issue is sanctioned by the Commission or within such extended time as the Commission may allow.
- vi. In terms of section 82(4) of the Act, every prospectus relating to the issue of shares, and every statement of financial position issued by the company subsequent to the issue of shares, shall contain particulars of the discount allowed on the issue of the shares.
- vii. In case of issues of shares for consideration otherwise than in cash then the requirements of regulations 113-115 of the Regulations shall be applicable.

- viii. Approval of the SECP is required for issuance of shares at discount for which the application shall be filed in accordance with the requirements of section 82 of the Act read with regulation 31 of the Regulations along with the fee provided in the Seventh Schedule to the Act.

[For detailed requirements, refer to section 82 of the Act and regulation 31 of the Regulations]

(iii) Issue of Bonus Shares:

Subject to requirements of sub-section (d)(i) of section 70 of the Act, an unlisted company may issue bonus shares in accordance with the requirements of regulation 109 of the Regulations.

Major Requirements:

- i. Issue of bonus shares is approved by the board.
- ii. The decision of the board to issue bonus shares, once announced, shall not be varied, postponed, withdrawn or cancelled.
- iii. Company can issue shares out of share premium account.

[For detailed requirements, refer to sections 70 and 81 of the Act read with regulation 109 of the Regulations]

(iv) Issue of Shares with Differential Rights:

Section 58 of the Act provides that a company may have share capital of different kinds and classes as provided by its memorandum and articles of association, provided that the differential rights and privileges attached to shares are specifically provided for in the articles of association of the company. Regulation 111 of the Regulations also stipulates that a company may issue shares with differential rights under section 58 of the Act subject to compliance with all the conditions as mentioned in regulation 111 of the Regulations.

Major Requirements:

- i. Different rights and privileges in relation to different kinds and classes of shares shall be specified in the articles of association of the company.
- ii. Issue of shares with different rights is recommended by the board through resolution and the decision of the board shall be in accordance with clauses (a) to (f) of regulation 108(1)(iii) and regulation 111(ii) of the Regulations including, *amongst others*, description of different kind of shares, description of different rights such as different class in each kind, rights and privileges attached to each class or kind of capital, mode of issuance of shares etc.
- iii. Issue of shares is authorized by a special resolution.
- iv. An unlisted company shall comply with applicable requirements as provided in regulation 110 of the Regulations for issuance of such shares offered by way of other than right. If such shares are being offered by way of Right, then the issuing company shall comply with the requirement as specified in regulation 108 of the Regulations.
- v. The company shall not amend, alter, vary or reassess the terms and conditions of such issue without approval of the holders of such shares carrying differential rights.
- vi. In case a company performs an act, which is contradictory to the provision to clause (v) above, the Commission may:
 - (a) direct such company to redeem the entire issue with immediate effect and make full compensation along with interest accrued therein, if any; or
 - (b) direct such company to convert the entire issue into ordinary shares with immediate effect; or

- (c) give direction as deemed appropriate by the Commission through an order after providing the company an opportunity of hearing.
- vii. An unlisted company may convert one class of shares into another class on the basis of special resolution without approval of the SECP. Provided that rights of holders of such converted shares are provided for in its articles. Provided further that a share that is not a redeemable preference share when issued cannot afterwards be converted into redeemable preference share.

[For detailed requirements, please refer to section 58 of the Act read with regulation 111 of the Regulations]

C. Valuation Requirements:

Where shares are proposed to be issued for consideration other than in cash, the value of non-cash assets or services or intangible assets shall be determined by a valuer.

Major Requirements:

- i. The following persons shall be eligible to conduct the requisite valuation:
 - a. Consulting Engineers registered with Pakistan Engineering Council;
 - b. Practicing chartered accountants having satisfactory Quality Control Review awarded by the Institute of Chartered Accountants of Pakistan; and
 - c. Any other person as notified by the Commission.
- ii. All such valuers shall continue to be regulated, administered and monitored by the entities in which they are originally registered, and shall comply with all relevant rules, regulations, instructions etc. of such entities in addition to requirements of the Act.
- iii. Following valuers who are independent shall be eligible to conduct valuation:
 - a. in respect of movable property *i.e.* plant and machinery, immovable property *i.e.* land, building etc., and natural resources & exploration thereof, by a valuer registered with the Pakistan Engineering Council as a Consulting Engineer;
 - b. in respect of stocks, shares, debentures, securities, net worth of a company or an undertaking, goodwill and other intangible assets, services, and liabilities, by a valuer who is a practicing-chartered accountant having satisfactory Quality Control Review awarded by the Institute of Chartered Accountants of Pakistan; and;
 - c. in respect of value of all other assets, not covered in clauses (a) and (b), by a valuer registered with the Pakistan Engineering Council as a consulting engineer having experience as a valuer of at least five years in the relevant field:
- iv. The valuation shall not be older than six months, or such other time period as may be notified by the Commission, from the date of allotment pursuant to section 70 of the Act in case of a private company and from the date of submission of application to the Commission in case of a public unlisted company seeking approval of the Commission pursuant to section 83(1)(b).
- v. Valuation report shall provide necessary information including but not limited to the following:
 - a. affidavit/undertaking from the valuer about title verification, physical existence of the asset and that the title of the property or consideration is free from all types of encumbrances.
 - b. in case of land & building; purchase date, location, particulars of existing owner, fresh Fard or any other legal document constituting the title or evidencing transfer of

ownership in the name of the issuing company, basis of valuation; present market value etc.

- c. in case of plant, equipment, machinery; purchase date, location, initial useful life, remaining useful life, basis of valuation, present market value of the asset etc.
- d. in case shares are being issued against intangible assets and services, the methodology used and justification for the same, present value etc.

[For detailed requirements, refer to section 460 of the Act read with regulations 113-115 of the Regulations]

D. Approval of the Commission:

The Commission shall consider the substance of the transaction, the complete facts of the application, and compliance with the relevant regulatory requirements before proceeding with the grant of the approval.

Disclaimer:

These are general guidelines to facilitate the unlisted companies and do not set aside, replace or substitute any existing regulatory requirements applicable to unlisted companies under the prevalent laws and regulations.
