

GOVERNMENT OF PAKISTAN
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

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Islamabad, the 8th October, 2019

S.R.O. 1213 (I)/2019.- The following draft amendments to the Public Offering Regulations, 2017, proposed to be made by the Securities and Exchange Commission of Pakistan, in exercise of the powers conferred under section 169 of the Securities Act, 2015 (III of 2015), are hereby published for information of all persons likely to be affected thereby and notice is hereby given that objections or suggestions, if any, received within fourteen days from the date of its placement on the website of the Commission, shall be taken into consideration, namely:-

DRAFT AMENDMENTS

(1) In regulation 2, in sub-regulation (1), in clause (xvii), after the words “Consultant to the Issue” at the end, the words “which may also be called Lead Manager or Advisor” shall be inserted;

(2) In regulation 3, -

(i) in sub-regulation (1),-

(a) for clause (i), the following shall be substituted, namely:-

“(i) the Issuer shall have been in operations for at least 3 financial years:

Provided that in case of non-compliance with the requirement of operational track record of three financial years, the issuer shall offer the shares through fixed price method only”.

(b) for clause (ii), the following shall be substituted, namely:-

“(ii) the Issuer has profitable track record for at least two preceding financial years from its core business activities:

Provided that in case of non-compliance with profitability criteria, the sponsors of the Issuer shall retain at least 51% of the post issue paid-up capital till the company reports net profit after tax for two consecutive financial years including profit from its core business activities:

Provided further that the issuer shall -

- (a) offer the shares through fixed price method only;
- (b) submit a time bound concrete business plan to turnaround the company into a profitable venture; and
- (c) disclose the following on the cover page of the Prospectus in bold language:

“This is a loss-making company. The risks associated with loss making companies are comparatively much higher than profitable companies. The prospective investor should, therefore, be aware of the risk of investing in such companies and should make the decision to invest only after careful due diligence. It is advisable to consult any independent investment advisor before making any investment.”;

- (c) for clause (iii) the following shall be substituted, namely:-

“(iii) not less than fifty one percent of the shares of the issuer are held by same persons for at least 2 preceding financial years:

Provided that clause (iii) shall not apply in case of new issuance of shares:

Provided further that clauses (i) to (iii) shall not apply in case of Green Field Project:

Provided also that Commission may consider relaxing any of the above clauses (i) to (iii) in case of privatization of government owned entities by Privatization Commission of Pakistan through capital markets; and”;

- (d) for clause (iv), the following shall be substituted, namely:-

“(iv) in case of green field project, following criteria shall be applicable-

- (a) sponsors’ contribution, in the form of equity in a green field project at the time of IPO, shall not be less than 75% of the entire equity and shall be retained till the commencement of commercial production;
- (b) in case the project requires debt financing, in addition to equity funding, financial close shall be mandatory;
- (c) successful business track record of sponsors preferably running a listed company/ies,

manufacturing/industrial units etc. considering various parameters such as operational profitability, operating cash flows, EPS and dividend payout etc.;

- (d) experience and skills of the Management to run the proposed project;
- (e) if required, Engineering, Procurement and Construction (EPC) contract shall be in place;
- (f) irrevocable letter of credit to be in place, where required;
- (g) the Issuer shall offer the shares through fixed price method only;
- (h) the Issuer shall disclose the following on the cover page of the Prospectus in bold language:
“It is a green field project. The risks associated with the green field project are much higher than a project that has commenced commercial production/operations. The prospective investor should, therefore, be aware of the risk of investing in such projects and should make the decision to invest only after careful due diligence. It is advisable to consult any independent investment advisor before making any investment.”;

- (ii) in sub-regulation (2), in clause (i), for the expression “, directors and associates” the expression “ and directors” shall be substituted; and
- (iii) in sub-regulation (3), for the semi colon, at the end, a colon shall be substituted and thereafter the following proviso shall be inserted namely:-

“Provided that the Consultant to the Issue and Book Runner can be the same person if they are independent of the Issuer.”;

- (3) in regulation 5, in sub-regulation (6), in clause (ii), in sub-clause (e), for the full stop a colon shall be substituted and thereafter the following proviso shall be inserted namely:-

“Provided that the requirements of clauses (d) and (e) shall apply only in case of green field projects.”

- (4) in regulation 7, in sub-regulation (9), for the words “five percent” the words “ ten percent” shall be substituted;
- (5) in regulation 16,-

(i) in clause (i), for the words “for three years” the words “till the fulfillment of the commitments mentioned in the prospectus” shall be substituted; and

(ii) for clause (ii), the following shall be substituted, namely:-

“(ii) submit a quarterly report, verified by the auditor, to the securities exchange till the fulfillment of the commitments mentioned in the prospectus stating the following:

a. Implementation status of the project/commitment made in the Prospectus as per format given below:

Commitment made in the Prospectus	Start date (disclosed in the prospectus)	Completion date (disclosed in the Prospectus)	Current status	Rationale for delay, if any.

b. Detailed break-up utilization of the proceeds raised from the issue.”

(6) after regulation 16, amended as aforesaid, the following new regulation shall be inserted, namely:-

“16A. Offering an Exit Opportunity in case of change in principal purpose of Issue as disclosed in prospectus.- (1) The Issuer shall not, at any time change the principal purpose of the issue as disclosed in the Prospectus.

(2) In exceptional circumstances, the issuer may change the principal purpose of the issue subject to passing of special resolution and offering an exit opportunity to dissenting shareholders who have not agreed to the change in principal purpose of the issue as disclosed in the Prospectus.


(3) Offering an exit opportunity shall also be mandatory where the principal purpose of issue was undertaken and thereafter funds were diverted to other purposes, which resulted in non-completion of principal purpose of issue in a timely manner as disclosed in the prospectus.

(4) The mechanism for an exit offer opportunity shall be as under:-

(i) EOGM notice in respect of any change in the principal purpose of the issue as disclosed in the prospectus shall

- be given along with draft special resolution as required under the provisions of Companies Act, 2017;
- (ii) subject to approval of special resolution as defined in the Companies Act, 2017, the shareholders who have dissented against the special resolution and conveyed their dissent to the company secretary under intimation to Pakistan Stock Exchange, shall be provided an opportunity to exit by offering a price per share, by the sponsors of the issuer that shall not be less than the offer price at which the shares were subscribed through IPO.
- (iii) The exit offer shall be executed by the sponsors within a period of thirty days from the date of passing of special resolution.”; and
- (7) in fourth schedule, in paragraph (2), for the words “six months” the words “thirty days” shall be substituted.

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(Bilal Rasul)
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