



COMPANIES (FURTHER ISSUE OF SHARES) REGULATIONS, 2020

S.R.O 231 (I)/2020 – Effective 16 March 2020

Introduction

Companies (Further issue of shares) Regulations, 2020 [“**Regulations**”] provide procedures for **issuance of further capital including preference shares**. These are in addition to the requirements included in **section 83** of the Companies Act, 2017 [“**Act**”]. Following is the **synopsis** of these Regulations.

Right Issue

Regulation 3 and Section 83

Any company may issue **right shares** subject to the following:

- Right share to be offered to **existing members** of the company **in proportion** to the shares held by them. (S.83)
- Board of Directors [“**BOD**”] **will approve decision** for right issue. (S.83)
- Letter of offer** to be sent to **each member** and the **registrar** simultaneously, signed by **at least 2 directors**, stating the number of shares offered and limiting a time between **15 and 30 days** from the date of the offer. (S.83)

As per the Regulations, **Listed Company** needs to comply with following **additional requirements**:

- The decision of BOD needs to be communicated on the **same day** to **SECP** and Pakistan Stock Exchange [“**PSX**”]. Right issue **once announced** by the board **not to be** varied, postponed or cancelled.
- Letter of offer**, in case of **listed companies**, to contain following information along with BOD’s resolution, that is to say:

<ul style="list-style-type: none">Information about company offering right issue:<ul style="list-style-type: none">Company profile and historyProfile of management and sponsorsName(s) of the statutory auditor(s)Existing capital indicating classes of shares, if anyName of holding company, if anyFinancial highlights of companyDetail of issue of capital.	<ul style="list-style-type: none">Details of the current right issue:<ul style="list-style-type: none">Description of issueFace value and average market price of shareBasis of determination of price of the rightProportion of new issue to existing issued sharesDate of meeting of board of directorsNames of directors attended the meetingJustification for the issueFinancial effects and total expenses
<ul style="list-style-type: none">Information about risk and risk mitigating factors<ul style="list-style-type: none">Description of major risks, which includes material contingencies & commitments, any adverse issue reported by the auditor in previous 5 yearsNames of underwriters	<ul style="list-style-type: none">Eligibility criteria:<ul style="list-style-type: none">Members’ eligibilityBankers to the issueAcceptance dateMode of acceptance

- Fractional shares** to be consolidated and **disposed of** by company and **proceeds to be distributed** to such members who have accepted the offer.
- Where issue of **bonus and right shares** are made **simultaneously**, the board decision to specify whether such bonus shares **qualify for right entitlement or not**.
- Right shares** may be issued at **face value**; at **premium**; or **at discount** to face value, if directors and substantial shareholders undertake to:
 - subscribe to their portion** of right shares or arrange subscription for the same through other persons; and
 - get it underwritten** by at least **2 underwriters** (licensed by the Commission).
- Book closure** for the purposes of right share to be made **within 30 days** from the date of the board’s resolution



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- **Quarterly** report on **utilization of proceeds** to be submitted to **SECP** till proceeds are fully utilized.
- Member may exercise the **right to renounce** the shares offered to him in favour of any other person. (S.83)

*In case of public company issuing shares for a consideration **other than cash**, in such case, it is required to adopt **special resolution** and seek **approval of SECP**. (S.83)*

*As part of SECP's **ease of doing business** initiative, certain requirements of Companies (Further Issue of Shares) Regulations, 2018 ("Reg 18") relating to right issue for listed companies have been simplified, such as:*

- Requirements **removed**:
 - Prohibition on listed companies for a right issue **within 1 year** of an issue of capital to the public or previous right issue.
 - Submission of **financial projections** signed by all the directors, to SECP.
 - **Auditor's certificate** with respect to free reserves per share for charging premium **up to** free reserve. However, for charging premium **above** free reserves, **undertaking** by directors & sponsors and depositing the amount of their subscription was required.
 - Premium not to be charged, where **breakup value** or 6 months **average market price** remained below par value.
 - Earlier, for issue of shares **at par**, directors and sponsors were required to deposit the amount of their subscription.
 - Publishing in newspapers and director's report, **reasons for failure** in completing right issue and obtaining permission for extension from SECP.
 - Explanation by listed companies for **any deviation from the purpose** of right issue, to be given in the directors' report.
- Requirements **modified/added**:
 - Now, the board's decision to also specify the **utilization of proceeds** along with any **associated risks** with the issue.
 - The complexity of issue **at par**, **premium** or **at discount** have now been substituted with just **undertaking** from the directors and substantial shareholder and underwriting by at least 2 underwriters.

Bonus Issue

Regulation 4

Any company issuing **bonus shares**, subject to its articles of association, need to comply with the following conditions, namely:

- It is to be approved by BOD.
- BOD's resolution of listed companies to be **communicated** to **SECP and PSX** on the **same day**.
- Bonus issue **once announced cannot be** varied, postponed, or cancelled.
- Company can issue bonus shares **out of share premium account** (S.81)
- *Earlier, the issue could be made **out of free reserves** in addition to share premium account. It may now be inferred that the bonus issue can be made out of; share premium account; general reserve; or retained earnings of the company.*

Issue of Shares Other Than Right

Regulation 5 and Section 83

Only public company may issue shares other than right subject to the following:

- BOD will **propose** the said issue, stating the following:



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Approval from SECP and shareholders through special resolution is required;	Name, profile & shareholding of person(s) to whom shares are proposed to be issued
Number of shares and percentage of paid up capital before and after the issue	Purpose, benefits and justification of the issue
Issue price per share and its justification	Consideration in cash or other than cash . The value of non-cash assets to be determined by a registered valuer , which should not be older than 6 months)
Break-up value per share based on latest audited financial statements	

- **Additional** requirements in case of a **listed company**:
 - **average market price** of share during **last 3 months** and **latest market price**;
 - board's decision to be communicated to **SECP** and **PSX** on the **same day**.
- *In earlier Reg 18 the provisions, which were synonymous with the provisions of the Act, have been removed. Similarly, detailed procedure for getting approval from SECP has also been done away with.*

Issue of Shares with Different Rights

Regulation 6

Any company may issue shares with different rights subject to the following:

- Memorandum and articles of association of the company to expressly authorizes the issue (s.58);
- BOD through resolution will **recommend** the said issue stating the following:

quantum; size; price; purpose; utilization; benefits; associated risks	description of different kind of shares, its rights and privileges;
whether shares will be issued as right or other than right ;	rights of holders regarding participation in profits of the company and share in surplus on its winding-up;
preference shares are cumulative or non-cumulative and rights of holders;	manner of redemption in case of redeemable shares and manner of conversion in case of convertible shares ;

- Approval from **SECP** and shareholders through **special resolution** is required.
 - *Following requirements of Reg 18 are no longer part of these Regulations:*
 - *Preference shares not to be issued at a discount*
 - *Shares with differential rights of a listed company not to exceed 25% of the total post-issue paid up share capital.*
 - *Company having consistent track record of distributable profits for the last 3 years.*
 - *Company has not defaulted in filing financial statements and in the payment of a declared dividend to its members and has not defaulted on conversion or redemption of its preference shares.*
 - *Detailed prescribed information to appear in statement of material facts now not required in these Regulations.*
 - *For good order, in our view, this prescribed information should have been retained in order to have consistency of data across the board, however, we hope that as per secretarial precedence this information will continue to appear in Statement of Material Facts.*
 - *Detailed procedure for getting approval from SECP has been done away with.*



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Employee Stock Option Scheme (ESOS)

Regulation 7 and Section 83

Public company may further issue shares **to its employees**, subject to the **approval of SECP** (S.83) on the following terms:

- It is **expressly authorized** by articles of association of the company;
- BOD to form **compensation committee** to administer the scheme; (For **listed company**, chairman of such committee to be an **independent director**).
- BOD through resolution will **recommend** the said issue, stating the following:

number of shares and percentage of paid up capital before and after the issue	issue price per share and its justification and purpose of the issue
consideration in cash or other than cash. The value of non-cash assets to be determined by a registered valuer , which should not be older than 6 months	name, profile & shareholding of person(s) to whom shares are proposed to be issued

- Approval from **shareholders** through **special resolution** and **SECP** is required;
- **Separate special resolutions** are required for issue of ESOS to:

the employees of a subsidiary or holding company ;	identified employees , during any 1 year, equal to or exceeding 1% of the issued capital ;
issue of shares at discount to face value;	variation in the terms of scheme.

Other Conditions:

Minimum period of 1 year between grant and vesting dates to be ensured.	Company to specify lock-in period for issuance of shares under ESOS.
Employees will not be entitled to any member's rights until shares are issued on exercise of option.	Option will lapse if not exercised , and lapsed option may be granted to other employees within 30 days from the date of lapse.

- Employees are **not allowed** to:
 - Pledge, hypothecate, or mortgage options granted to them.
 - Transfer options granted to them **except to an entitled employee** and all the granted options in case of:
 - **death** of an employee – to **vest in his legal heirs**;
 - employee suffers a **permanent incapacity** – to **vest in himself** in case;
 - **resignation or termination** of employee – options not vested will expire.
- *The following requirements of Reg 18 are no longer part of these Regulations:*
 - *Earlier, only permanent and regular employees were eligible to participate in the scheme.*
 - *Company is in operation and had not defaulted in filing financial statement for last 3 years and had not defaulted in the payment of declared dividend and any dues of employee to any authority.*
 - *Detailed terms of reference of compensation committee were provided.*
 - *Different mechanisms were given for calculating the base price for the determination of exercise price, now it is decided by the directors at their discretion.*



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- *Earlier in case of failure to exercise the option, the option lapsed and amount payable by the employees now such lapsed option may be granted to other employees within 30 days from the date of lapse.*

- *Detailed prescribed information to appear in **statement of material facts** now not required in these Regulations.*

We would reiterate that for good order, in our view, this prescribed information should have been retained in order to have consistency of data across the board, however, we hope that as per secretarial precedence this information will continue to appear in Statement of Material Facts.

- ***Auditors' certificate** regarding the implementation of the scheme in accordance with Regulations and submitting **annual report to SECP** containing certain information related to the scheme.*

General Conditions

Regulation 9

- BOD not to recommend increase in capital **beyond the authorised capital**; and
- If company has **different classes of shares**, such fact should be mentioned in **offer letter** and **director's report**.
- *Earlier, certain information was needed to be provided in the Director's report as part of the disclosure requirement about different issue of shares under these Regulations have now been removed.*

Reporting and Penalty

Regulation 11

A report to be submitted to SECP **within 30 days** from the date of issue of shares, clearly stating shares issued to: **directors; associated companies; other shareholders**; and to persons to whom **unsubscribed shares issued**.

Penalty for any contravention under these Regulations would be as follows:

Penalty	Further Penalty
Up to Rs. 5 million	Up to Rs. 100 thousand -for every day during which such contravention continues

KPMG Offices in Pakistan

Karachi Office

Sheikh Sultan Trust Building No. 2
Beaumont Road, Karachi 75300
Phone +92 (21) 3568 5847
Fax +92 (21) 3568 5095
eMail karachi@kpmg.com

Lahore Office

351 Shadman-1, Main Jail Road,
Lahore Pakistan
Phone +92 (42) 111-KPMGTH (576484)
Fax +92 (42) 3742 9907
eMail lahore@kpmg.com

Islamabad Office

Sixth Floor, State Life Building
Blue Area, Islamabad
Phone +92 (51) 282 3558
Fax +92 (51) 282 2671
eMail islamabad@kpmg.com

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