

Guidebook  
On  
Further Issue of Shares  
Otherwise Than Rights



Securities and Exchange Commission of Pakistan

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## **Chapter No. 1**

### **INTRODUCTION**

This booklet is a guide to the laws and rules governing further issue of shares otherwise than rights, by a company limited by shares. This guide is designed to explain and clarify the procedure of obtaining approval from the existing shareholders and filing an application with the Securities and Exchange Commission of Pakistan (the "Commission") under the provisions of the Companies Ordinance, 1984 (the "Ordinance") and Companies (General Provisions and Forms) Rules, 1985 (the "Rules").

Every company is required to comply with following requirements of the law before filing an application with the Commission:-

- i). Alter Memorandum of Association to give effect to increase in authorized capital of the Company through a special resolution, where existing authorized capital of a company is fully subscribed, or the un-issued capital is insufficient for the new issue;
- ii). Approval of shareholders through a special resolution for further issue of shares otherwise than rights 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). Application to be submitted in a manner prescribed under Rule 30 of the Rules.

The guide highlights the topic under the Companies Ordinance, 1984 and Companies (General Provisions and Forms) Rules, 1985.

## **Chapter No. 2**

Relevant provisions of the Ordinance and Rules, in brief, stipulating various conditions regarding further issue of shares by a company are narrated hereunder however detailed provisions may be referred to from the Ordinance and the Rules:-

### **2.1. The Companies Ordinance, 1984**

#### **Specific Requirements**

- ✓ Provisions of **Section 28** of the Ordinance require that a company may alter or add to its Articles of Association by passing a special resolution and any alteration or addition so made shall be as valid as if originally contained in the articles, and be subject in like manner to alteration by special resolution. The Company needs to pass a special resolution to alter its Memorandum of Association, to give effect to the increased authorized capital of the Company, if required.
- ✓ **Proviso to Sub-section (1) of Section 86** of the Ordinance regarding further issue of capital provides that the Federal Government may, on an application made by any public company on the basis of special resolution passed by it, allow such company to raise its capital without issue of right shares.

While issuing notice of general meeting, to be held for taking approval of the shareholders for issuance of shares otherwise than rights, following provisions of the Ordinance stipulating certain conditions may be kept in mind:

- ✓ Provisions of **Clause (b) of Sub-section (1) of Section 160** of the Ordinance, as to meetings and votes, requires that:
  - where any special business, that is to say business other than consideration of the accounts, balance-sheets and the reports of the directors and auditors, the declaration of a dividend, the appointment and fixation of remuneration of auditors, and the election or appointment of directors, is to be transacted at a general meeting, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning such business, including, in particular, the nature and extent of the interest, if any, therein of every director, whether directly or indirectly, and, where any item of business consists of the according of an approval to any document by the meeting, the time when and the place where the document may be inspected shall be specified in the statement;

### **2.2. Companies (General Provisions and Forms) Rules, 1985**

- ✓ **Rule 30** of the Rules explains the mode of submission of application to the Commission. It is provided therein that the application shall, in addition to complying with any other requirement of the Ordinance or the rules, be –

(i) duly signed and verified by an affidavit by the applicant indicating complete name and address and, in the case of a company, signed and verified by an affidavit by a responsible officer of the company;

(ii) neatly and legibly written, typed or printed, setting out precisely the facts, grounds and claims or relief applied for in serially numbered paragraphs and specifying the relevant provisions of the Ordinance under which action or relief is applied for;

(iii) accompanied by documents referred to in the application or relied upon and, in case of an appeal against any order or decision, by a certified copy of such order or decision;

(iv) accompanied by one spare copy, duly signed, dated and verified and accompanied by copies of the documents as aforesaid; and

(v) accompanied by the original bank challan or draft for the fee paid for the application.

### **2.3. Sixth schedule of the Ordinance**

Para VII of the Sixth Schedule of the Ordinance provides that filing fee, by or on behalf of a company, for application with the Commission or the Registrar shall be Rs.500.

## **Chapter No. 3**

### **General Requirements of the Ordinance**

The Company shall also take care of the following provisions of the law while considering issue of shares otherwise than rights:-

- ✓ Provisions of **Section 91** of the Ordinance stipulate that only fully paid shares should be issued and no company shall issue partly paid shares.
- ✓ **Section 92** of the Ordinance provides that a Company limited by shares, if so authorized by its articles, may alter the conditions of its memorandum so as to increase its share capital by such amount as it thinks expedient. Sub-section (2) of the aforesaid provision of the Ordinance explains that new shares issued by the company shall rank *pari passu* with the existing shares of the class to which the new shares belong in all matters, including the right to such bonus or right issue and dividend as may be declared by the company subsequent to the date of issue of such new shares. Provisions of Sub-section (3A) provide that notwithstanding anything contained in this Ordinance or any other law for the time being in force or the memorandum and articles, where the authorized capital of a company is fully subscribed, or the un-subscribed capital is insufficient, the same shall be deemed to have been increased to the extent necessary for issue of shares to a scheduled bank or financial institution in pursuance of any obligation of the company to issue shares to such scheduled bank or financial institution.
- ✓ Provisions of **Sub-section (1) of Section 94** of the Ordinance state that where a company having a share capital has resolved to increase its share capital beyond the authorized capital or such capital is increased under Sub-section (3A) of Section 92 of the Ordinance it shall file with the registrar, within fifteen days after passing of the resolution, a notice of the increase of capital and the registrar shall record the increase.

Provided that where default is made by a company in filing a notice of increase in the authorized capital under Sub-section (3A) of Section 92, the scheduled bank or the financial institution to whom shares have been issued may file notice of such increase with the registrar and such notice shall be deemed to have been filed by the company itself and the scheduled bank or financial institution shall be entitled to recover from the company the amount of any fee properly paid by it to the registrar in respect of such increase.

**Sub-section (2)** of the aforesaid provisions of the Ordinance provides that the notice to be given under Sub-section (1) shall include particulars of the shares to be affected and the conditions, if any, subject to which the new shares are to be issued.

✓ Provisions of **Section 95** of the Ordinance require that :

(1) No company shall have power to buy its own shares or the shares of its holding company.

(2) No company limited by shares, other than a private company, not being a subsidiary of a public company, shall give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with purchase made or to be made by any person of any shares in the company or, where the company is a subsidiary, in its holding company:

Provided that nothing in this Sub-section shall prevent the company from advancing or securing an advance to any of its salaried employees, including a chief executive who, before his appointment as such, was not a director of the company, but excluding all directors of the company, for purchase of shares of the company or of its subsidiary or holding company, if making or securing of such advance is a part of the contract of service of such employee.

## **Chapter No. 4**

### **4.1 Notice of General Meeting**

The notice of general meeting shall be sent to the members at least twenty-one days before the date of the meeting and, in the case of a listed company, such notice, in addition to its being dispatched in the normal course, shall also be published at least in one issue each of a daily newspaper in English language and a daily newspaper in Urdu language having circulation in the Province in which the stock exchange on which the company is listed is situate. [Section 158 & 159 of the Ordinance]

Notice of general meeting must be faxed to the Commission along with statement under Section 160 of the Ordinance on the same date on which it is sent to the shareholders and copies of the newspapers in which the notices of general meeting are published may be sent to the Commission within 07-days of their publication. [Circular No. 5 dated March 14, 2002]

Notice of the general meeting at which business for issuance of further capital, otherwise than rights, is placed before the shareholders for approval, must specifically indicate:

1. the proposed resolution is a special resolution;
2. provision of the Ordinance under which the resolution is proposed;
3. total number of shares to be issued;
4. price per share;
5. total amount of capital to be issued;
6. the fact that the shares are to be issued otherwise than rights;
7. to whom these shares are proposed to be issued.

### **Illustration**

Agenda item 3: to pass a special resolution under the provisions of Section 86(1) of the Companies Ordinance, 1984, for issuance of 1,000 ordinary shares of the Company at Rs.10 each, total amounting to Rs.10,000.00 (rupees ten thousand only), by way of otherwise than rights, to ABC.

### **4.2 Statement of Material Facts**

Clause (b) of Sub-section (1) of Section 160 of the Ordinance requires that where any special business is to be transacted at a general meeting, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning such business.

As provisions of Section 86 of the Ordinance require that where a public Company intends to issue shares otherwise than rights it may file an application with the Commission, on the basis of special resolution passed by it.

In view of the above a Company is required to circulate statement of material facts along with the notice of general meeting at which the issuance of further shares, otherwise than rights, by the Company is placed before the shareholders of the Company for approval.

#### **4.3 Information to be disclosed to the shareholders**

Section 160 of the Ordinance states that the statement annexed to the notice of the general meeting with regards to special business provides all material facts concerning such business. Therefore the aforesaid statement, at minimum may include the following information with regards to issue of further shares without rights to the existing shareholders:-

- ✓ **Justification** as to why proposed shares are to be issued otherwise than rights and not as rights shares;
- ✓ **Name** of the person(s) / organization(s) / company(s) etc. to whom shares will be issued;
- ✓ **Price** at which the proposed shares will be issued. Justification, with details of the latest available market price and break up value per share, if such price differs from par value;
- ✓ **Detail of asset(s)**, if proposed shares are to be issued for consideration otherwise than cash;
- ✓ **Purpose** of the issue, **utilization** of the proceeds of the issue and **benefits** to the Company and its shareholders with necessary details;
- ✓ **Existing shareholding** of the person(s) / organization(s) / company(s) etc. to whom the proposed shares will be issued (in number as well as percentage vis-à-vis to existing paid up capital of the Company);
- ✓ **Total shareholding** of the person(s) / organization(s) / company(s) etc. after the proposed issue of shares (in number as well as percentage vis-à-vis to increased paid up capital of the Company);
- ✓ Whether the person(s) / organization(s) / company(s) etc. has provided **written consent** to the Company for purchase of such shares;
- ✓ The fact that these shares will rank **pari passu** in all respects with the existing shares of the Company. Details if there is any change.
- ✓ The fact that this issue of shares is **subject to approval of the Commission**;

**If proposed shares are preference shares then the Commission’s Guide book on “Issue of preference shares” may be consulted.**

## **Chapter No. 5**

### **Application to the Commission**

The Company after passing the special resolution has to file duly filled form 26 with the concerned Registrar and obtain a certified copy of the same. The application to be filed with the Commission, for its approval, under proviso to Sub-section (1) of Section 86 of the Ordinance shall be submitted in a manner provided in Rule 30 of the Rules together with the following information / documents:-

- ✓ The application must narrate in detail the **specific purpose** for which the proceeds of the issue will be utilized;
- ✓ The application must be **signed** by the officer/director of the Company who has been authorized by the shareholder to accomplish the transaction;
- ✓ **Financial projections** for next three years reflecting implementation of the plan and its benefits;
- ✓ If the Memorandum and Articles of Association of the Company have been amended then a **certified copy** of the same may also be provided;
- ✓ **Certified copy of form 26** with detailed text of special resolution;
- ✓ **Justification** as to why shares are proposed to be issued otherwise than rights;
- ✓ Relevant detail of the **shares issued** within past two years;
- ✓ **Minutes of the board of director's meeting**, along with attendance sheet, in which decision for issuance of further shares otherwise than rights was made;
- ✓ **Attendance sheet of shareholders**, who attended the general meeting either in person or through proxies;
- ✓ **Affidavit** as required under Rule 30 of the Rules;
- ✓ Copy of **voucher** evidencing deposit of application fee.



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