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SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Through Courier

November 16, 2011

The Chief Executive
Pakistan Business Council
M-02, Mezzanine Floor
Beaumont Plaza
10, Beaumont Road,
Karachi
Fax: 021-35630530

Subject: Consultation Session on Amendments in Listed Companies (Substantial Acquisition of voting shares and Takeover) Regulations, 2008

Dear Sir,

The legal framework for takeover of a listed company was introduced through promulgation of the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Ordinance, 2002 ("Takeover Ordinance"). The Takeover regime was further strengthened by introduction of the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Regulations, 2008 ("Takeover Regulations") framed under the Takeover Ordinance. These Regulations were thereafter amended in consultation with stake holders vide notification dated June 23, 2009.

While monitoring compliance of the Takeovers laws certain areas are identified by the Commission which needs to be addressed specifically, so as to make the regulatory framework more comprehensive and equitable.

In this regard, Commission has decided to have a consultation session with stakeholders, including leading business groups, stock exchanges, and renowned professionals in the field of corporate law, professional accountancy bodies, companies and business associations to get their perspective and incorporate valuable input in Takeover Regulations.

Therefore, a roundtable meeting of the important stakeholders with the honorable Chairman Securities and Exchange Commission of Pakistan, for deliberations on Takeover Regulations has been arranged at Securities & Exchange Commission of Pakistan, Regional Office, 5th Floor, State Life Building No.2, Wallace Road, Karachi, on November 25, 2011 from 10:30 A.M. to 12:00 Noon.

You are requested to please nominate a representative of your organization to participate in the consultation session and share valuable views. Draft on the proposed amendments in Takeover Regulations is enclosed for ready reference.

We look forward to your active participation.

Regards,

Abid Hussain
Director (Enforcement)

PROPOSED AMENDMENTS IN LISTED COMPANIES (SUBSTANTIAL ACQUISITION OF VOTING SHARES AND TAKEOVERS) REGULATIONS 2008

S. No.	Existing Provision	Proposed changes	Rationale for Change								
1.	<p>The chain acquisition principle</p> <p>Section 5 and 6 provides that no person shall, directly or indirectly, acquire voting shares or control of a listed company, unless such person makes a public announcement of offer to acquire voting shares or control of such company.</p>	<p>Regulation 6 sub regulation 3</p> <p>Explanation. – For the purposes of this Regulation, acquisition shall include direct or indirect acquisition of voting shares or control of a listed company by virtue of acquisition of voting shares or control of a company, whether listed or unlisted and whether in Pakistan or abroad.</p>	<p>The concept of chain acquisition is that if a person or group of persons, acting in concert, acquire shares resulting in a holding of 25% or more of the voting rights or control of a company, (which need not to be a company to which the Takeover Ordinance applies directly) however due to such acquisition the acquirer will thereby acquire or consolidate control, of a second listed company, either directly or indirectly or through intermediate companies, when aggregated with those which the person or group is already interested in, secure or consolidate control of the second company, the acquirer shall be required to make a public offer for the second company as if it has acquired 25% or more voting rights of listed company or its control.</p>								
2.	<p>Takeover fee to be made relative to the offer size</p> <p>Regulation 8(4) - “The public announcement of offer shall be submitted to the Commission along with the document prescribed in schedule VII and a non-refundable processing fee of Rs.500,000/-”.</p>	<p>Regulation 8(4) - “The public announcement of offer shall be submitted to the Commission along with the document prescribed in schedule VII and non-refundable processing fee. The fee structure is as follows:</p> <table border="1" data-bbox="873 1066 1354 1238"> <thead> <tr> <th>Offer Size</th> <th>Fee</th> </tr> </thead> <tbody> <tr> <td>Up to Rs. 100 million</td> <td>Rs. 500,000</td> </tr> <tr> <td>Up to Rs. 500 million</td> <td>Rs. 750,000</td> </tr> <tr> <td>More than Rs. 500 million</td> <td>Rs. 1,000,000</td> </tr> </tbody> </table>	Offer Size	Fee	Up to Rs. 100 million	Rs. 500,000	Up to Rs. 500 million	Rs. 750,000	More than Rs. 500 million	Rs. 1,000,000	<p>To bring processing fee relative to offer size.</p>
Offer Size	Fee										
Up to Rs. 100 million	Rs. 500,000										
Up to Rs. 500 million	Rs. 750,000										
More than Rs. 500 million	Rs. 1,000,000										
3.	<p>Amendment of Regulation 12 to bring it in line with Sub section 4 of Section 13 of the Takeover Ordinance</p> <p>Regulation 12 - “The date of closure of public offer for the acquisition of voting shares of the target company by the acquirer</p>	<p>Regulation 12 - “the date of closure of public offer for acquisition of voting shares of the target company by the acquirer shall not be later than</p>	<p>Section 13 (4) of the Takeover Ordinance states that “the date of acceptance of a public offer shall be not later than the sixtieth day from the date of</p>								

	shall be sixtieth day from the date of public announcement of offer.”	sixtieth day from the date of public announcement of offer”	public announcement”. Regulation 12 of the Takeover Regulations however fixes a sixty day period for public offer. This inconsistency, between Section 13(4) of the Takeover Ordinance with Regulation 12 of the Takeover Regulations is to be removed through this amendment.
4.	Clarify the negotiated weighted price as per share purchase agreement		
	No provision exists at the time being.	Regulation 13(1)(a) & 13(2)(a) - “Explanation: Negotiated Weighted Average Price includes total consideration paid including the sum of the liabilities settled and/or taken over and consideration paid either in cash or non-cash against the shares purchased.”	Regulation 13 of the Takeover Regulations prescribes mechanism for determination of minimum Offer Price. One of the benchmark prices given in Regulation 13(a) is negotiated weighted average price per share. It has been observed that often pricing formula in SPAs is such that it provides for cash consideration against the shares purchased in addition to repayment of outstanding liabilities on behalf of the sellers. As a result a higher price is actually paid by the acquirer as compared to price offered to general public. The explanation is proposed to be added after Regulation 13(1)(a) & 13(2)(a) so as to clarify that the negotiated weighted average price shall include all payments to or on behalf of the sellers and which are part of purchase consideration.
5.	Introduction of Chartered Accountant as valuator for valuation of assets of Banks in Regulation 13		
	No provision exists at the time being.	Regulation 13 (1)(f) - “notwithstanding anything contained in clause (e) the price per share calculated on the basis of net assets value, not earlier than six months before the date of such valuation, by a Chartered Accountant firm having a satisfactory QCR rating given by Institute of Chartered Accountants of Pakistan for financial assets and liabilities and a valuer whose name appears on the list of SBP approved list of valuers for non-financial assets and liabilities in case of banks and financial institutions” Regulation 13(2)(d) - “notwithstanding anything	In case of acquisition of banks, queries have been received by the Commission that how can a valuer on SBP panel, value the financial assets, therefore, a firm of chartered accountant may be also be allowed as valuer in case acquisition relates to a bank or financial institution. Therefore, Clause (f) and (d) is added in Sub-regulations (1) & (2) of Regulation 13, respectively.

		contained in clause (c) the price per share calculated on the basis of net assets value, not earlier than six months before the date of such valuation, by a Chartered Accountant firm having a satisfactory QCR rating given by Institute of Chartered Accountants of Pakistan for financial assets and liabilities and a valuer whose name appears on the list of SBP approved list of valuers for non-financial assets and liabilities in case of banks and financial institutions”.	
6.	Fixing responsibility of acquirer to confirm the report of valuer (s) in Regulation 13 No provision exists at the time being.	Proviso after newly proposed Regulation 13(1)(f) & Regulation 13(2)(d): “Provided that the acquirer shall confirm that the valuations report (s) has been discussed with the valuer (s) and the valuation and assumptions taken in the report are confirmed to be correct. The acquirer shall furnish the confirmation report in writing, jointly signed by all acquirers and the valuer(s), to the Commission through manager to the offer along with the public announcement of offer in terms of Section 9(3) of the Takeover Ordinance.	With respect to Regulation 13 of the Takeover Regulation, wherein method to arrive at a price per share is the net assets valued by a valuer. Takeover Regulations are silent as to who will confirm the assumptions taken by the valuer (s). The Takeover Ordinance and the Takeover Regulations do not provide for any action against the valuer and also the transaction undertaken shall be irreversible and will have legal complications. It is therefore, proposed to add this proviso in Regulation 13.
7.	Rectify the eligibility of persons to participate in the public offer Regulation 3(1) - “A person who is a shareholder of the target company as on the date of closure of public offer shall be eligible to participate in the public offer”.	Regulation 3(1) - “A person who is a shareholder of the target company as on the date of book closure shall be eligible to participate in the public offer”.	To determine the eligibility of shareholder of target company to participate in public offer on book closure date instead of date of closure of public offer..
8.	Remove anomalies between the Regulation 9 and the time line given in schedule VIII		

	<p>Regulation 9(1) - "the target company shall announce its book closure on the thirty-sixth day of the public announcement of offer, to determine the eligibility of persons to receive the offer letter".</p> <p>Schedule VIII states that the book closure would be on T + 43.</p>	<p>Regulation 9 (1) - "the target company shall announce its book closure on the forty third day of the public announcement of offer, to determine the eligibility of persons to receive the offer letter".</p>	To align Regulation 9(1) with Schedule VIII.
9.	Spot trading of shares of the target company		
	<p>Regulation 10 - The shares of the target company shall be traded on spot basis from the twenty-ninth day till the thirty-fifth day of the public announcement of offer.</p>	<p>Regulation 10 - The shares of the target company shall be traded on spot basis from the thirty sixth day till the forty second day of the public announcement of offer.</p>	To bring Regulation 10 in align with Schedule VIII.
10.	<p>Changes in the office of manager to offer</p> <p>No provision exists at the time being.</p>	<p>21A - Changes in the office of manager to offer</p> <p>(1) Any change in the office of the manager to the offer, appointed in terms of section 7 of the Takeover Ordinance, shall be subject to the approval of the Commission; however the manger to the offer shall continue to hold office till the new manager assumes the office.</p> <p>(2) The acquirer shall file the following information / documents with the application to the Commission:</p> <ol style="list-style-type: none"> The reason of change; Certificate from the manager to the offer clearly reflecting the compliance of relevant requirements till the current stage; Consent for acceptance from the proposed manager to the offer <p>(3) The acquirer after approval of the Commission shall immediately inform all the stock exchanges:</p>	The Takeover Ordinance is silent regarding change in the office of manger to the offer, which can occur or may be necessitated due to any reason. It is recommended by the Committee that a new regulation may be inserted in the Takeover Regulation providing for the mode, manner and circumstances in which an acquirer may seek Commissions approval for change in the office of manager to offer.

		<p>(4) The acquirer immediately send letters to all the members of the target company to whom the offer letters were issued intimating about the change of the manager to the offer and particulars of new manager to the offer;</p> <p>(5) Within two days of the receipt of approval from the Commission the acquirer shall publish in the same newspapers in which public announcement was published about the change in the manager to the offer and particulars of the new manager;</p> <p>The manager to the offers shall be liable for any default / non-compliance for the relevant period of appointment.</p>	
11.	<p>Offer timetable T - 180 to T Disclosure in manner specified in Section 4 of the Ordinance</p>	To be removed	It is contradictory with respect to the provision of Section 9 of the Ordinance and Regulation 6 of the Takeover Regulation. Basically it is applicable in case of Section 4 wither acquirer acquires more than 10% share but not more than 25% shares of the listed company.
12.	<p>Number of voting shares to be acquired</p> <p>Regulation 14(1) - The acquirer may acquire any number of voting shares through an agreement but where the acquisition attracts the provisions of section 5 or section 6 of the Ordinance the acquirer shall make a public announcement of offer to acquire at least fifty percent of the remaining voting shares of the target company.</p>	Suggestions are solicited for any positive change in the said regulation.	<p>Number of submission is being received from the market in which it is proposed that the offer size may be reduced further to facilitate and ease out the acquirer. In this context, stakeholders are requested to give their valuable input for any revision in the said regulation.</p> <p><u>International practice for offer size</u> Generally the investor is required to announce a tender offer for the purchase of all remaining shares. However followings are some exception</p>

			<ul style="list-style-type: none"> ▪ India - 26% of the total voting share (on acquisition of 25% or more voting shares). ▪ Indonesia - all shareholders but within 2 years maintain free float of 20% ▪ Jordan - purchase shares from all subscribing shareholders in adequate proportion to the number of share that he intends to purchase ▪ Malaysia - acquire shares from all subscribing shareholders up to the percentage of the voting shares to be acquired ▪ Nigeria, South Korea - an investor is allowed to announce a tender offer for a part of remaining shares ▪ Venezuela - investor must indicate the percentage of shares which he intends to acquire.
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Proposed Amendments in Takeover Ordinance

S. No.	Existing Provision	Proposed changes	Rationale for Change
1.	Introduction of new exemptions in Section 3	<u>Section 3</u> r) Inter se transfer of voting shares within members of a group; s) Offshore acquisition of voting shares where price determination for voting shares of Pakistani company is not possible. t) Exemption from public offer where minimum level of acquisition cannot be achieved as other major shareholders are not interested to sell their voting shares. u) inter se transfer of shares amongst relatives including brothers and sister, who have controlling interest in the company.	New exemptions to be added in Section 3 of the Ordinance.
2.	Threshold levels		
	<u>Section 5(1)</u> - No person shall, directly or indirectly, acquire—		Input is received from the market that the threshold levels should be increased.

<p>voting shares, which (taken together with voting shares, if any, held by such person) would entitle such person to <u>more than twenty five per cent voting shares</u> in a listed company; or control of a listed company, unless such person makes a public announcement of offer to acquire voting shares or control of such company in accordance with this Ordinance.</p> <p>Section 6(1) - No acquirer, who has acquired more than twenty-five per cent but less than fifty-one per cent of the voting shares or control of a listed company, shall acquire additional voting shares or control unless such acquirer makes a public announcement of offer to acquire voting shares or control in accordance with this Ordinance:</p>		<p>Internationally threshold for tender offer are as follows:</p> <ul style="list-style-type: none"> ▪ India - 25% ▪ UK - 30% ▪ Indonesia - 50% ▪ Argentina - 35% ▪ Barbados, Croatia, Colombia - 25% ▪ China - 30% ▪ Egypt, Nigeria, Hungary - 33.3% ▪ Philippines, South Africa - 35% ▪ Jordan and Lithuania - 40% ▪ Poland - 33% ▪ Turkey - 25% ▪ Venezuela - 10%
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