

**SECP APPROVES INVESTMENT IN
ASSOCIATED COMPANIES /
ASSOCIATED UNDERTAKINGS
REGULATIONS -2012**



IRASG
The Impact



The Companies (Investment in Associated Companies or Associated Undertakings) Regulations, 2012.

Executive Summary

The SECP through S. R. O. 27(I)/2012 has approved the *Companies (Investment in Associated Companies or Associated Undertakings) Regulations, 2012*.

The purpose behind the exercise is to ensure transparency in transactions involving investments made by the companies in their associated companies / undertakings through passable and standardized disclosure to the members.

These conditions / restrictions are geared towards monitoring those transactions with respect to their nature, period, amount and other related terms & conditions.

The main features of these regulations are as under:

- Section 208 of the Companies Ordinance, 1984, being the governing section requires the companies to obtain **members approval** for making investments in associated companies or associated undertakings and further empowers the *SECP* to make regulations in respect of such investments;
- A **notice for holding general meeting** seeking investment in any of the associate should disclose / contain the following;
 - a statement pursuant to clause (b) of sub-section (1) of section 160 of the Ordinance setting out the information mentioned in clauses (a), (b) and (c) of sub-regulation (1) of regulation 3 of these regulations;
 - The directors of the investing company are required to submit an undertaking to the members of the investing company that they have carried out necessary due diligence for the proposed investment;
 - All common sponsorship / directorship interest are required to be disclosed



- In case the decision to make investment is not implemented either fully or partially till the holding of subsequent general meeting(s), the status of the decision must be explained to the members through a statement having the details mentioned in sub-regulation (2) of regulation 4 of these regulations;
- Latest audited annual financial statements of the associated company / associated undertaking along with the latest reviewed financial statements, if any, shall be made available for inspection of the members in the general meeting called for considering investment decisions pursuant to section 208 of the Companies Ordinance, 1984.
- Certain conditions and restrictions applicable to a company making investment, in securities or by way of loans and advances of its associated companies / associated undertakings are mentioned in regulations 6, 7 and 8 of these regulations; and
- Investing company is required to maintain a register of Investments in associated companies / associated undertakings, showing separately investment in each associated company / associated undertaking including the information prescribed in sub-regulation (1) of regulation 9 of these regulations.



These regulations are applicable to all companies seeking to invest in their associated companies / associated undertakings except and to the extent they are specifically exempted by the SECP under clause (a) of sub-section (2A) of section 208 of the Companies Ordinance, 1984, and the same shall come into force at once.

Companies (Investment in Associated Companies or Associated Undertakings) Regulations, 2012

Notice of Meeting and Information to Members (Regulation 3)

This regulation requires a company to disclose the following information, while issuing notice of its general meeting, in which a special business related to investments in any of its associated companies / associated undertakings, is to be transacted under section 208 of the Ordinance.

Further the directors of the investing company while presenting the special resolution for making investment in its associated company / associated undertaking are required to submit an undertaking to the members of the investing company that they have carried out necessary due diligence for the proposed investment. The said due diligence report shall be made available to the members for inspection in the general meeting called for approval of the special resolution.

In case of investment in securities – Regulation 3(1)(a)

- (i) name along with the basis of relationship of the associated company / associated undertaking;
- (ii) purpose, benefits and period of investment;
- (iii) maximum amount of investment;
- (iv) maximum price at which securities will be acquired;
- (v) maximum number of securities to be acquired;
- (vi) number of securities and percentage thereof held before and after the proposed

Investment in Associates



investment;

- (vii) in case of investment in listed securities, average of the preceding twelve weekly average price of the security intended to be acquired;
- (viii) in case of investment in unlisted securities, fair market value determined in terms of regulation 6(1);
- (ix) break-up value of securities on the basis of the latest audited financial statements;
- (x) earning per share of the associated company / undertaking for the last three years;
- (xi) sources of fund for acquisition;
- (xii) in case the securities are intended to be acquired using borrowed funds:
 - a) justification for investment; and
 - b) detail of guarantees and assets pledged;
- (xiii) salient features of the agreement(s), if any, entered into with its associated company/undertaking with regards to the proposed investment;
- (xiv) interest, direct or indirect, of directors, sponsors, majority shareholders and their relatives, if any, in the associated company/undertaking or the transaction under consideration; any other important details necessary for the members to understand the transaction; and
- (xv) In case of investment in securities of a project of an associated company / undertaking that has not commenced operations, in addition to the information referred to above, the following further information, is also required:
 - a) description of the project and its history since conceptualization;
 - b) starting and expected dated of completion of work;
 - c) time by which such project shall become commercially operational; and



- d) expected time by which the project shall start paying return on investment.

In case of investment by way of loans and advances – Regulation 3(1)(b)

- (i) name along with the basis of relationship of the associated company / undertaking;
- (ii) amount of loans or advances;
- (iii) purpose of loans or advances and benefits likely to accrue to the investing company and its members from such loans or advances;
- (iv) in case any loan has already been granted, the complete details thereof;
- (v) latest financial position, including main items of balance sheet and profit and loss account of the associated company/undertaking;
- (vi) average borrowing cost of the investing company or in case of absence of borrowing the KIBOR (Karachi Inter Bank Offered Rate) for the relevant period;
- (vii) rate of interest, mark up, profit, fees or commission etc. to be charged;
- (viii) sources of funds from where loans or advances will be given;
- (ix) where loans or advances are being granted using borrowed funds:
 - a) justification for granting loan or advance out of borrowed funds;
 - b) detail of guarantees / assets pledged for obtaining such funds, if any; and
 - c) repayment schedules of borrowing of the investing company;
- (x) particulars of collateral security to be obtained against loan to the borrowing company or undertaking, if any;

Investment in Associates



- (xi) if the loans or advances carry conversion feature i.e. it is convertible into securities, this fact along with complete detail including conversion formula, circumstances in which the conversion may take place and the time when the conversion may be exercisable;
- (xii) repayment schedule and terms of loans or advances to be given to the investee company;
- (xiii) salient feature of all agreements entered or to be entered with its associated company/undertaking with regards to proposed investment;
- (xiii) interest, direct or indirect, of directors, sponsors, majority shareholders and their relatives, if any, in the associated company/undertaking or the transaction under consideration;
- (xiv) any other important details necessary for the members to understand the transaction; and
- (xv) in case of investment in a project of an associated company / undertaking that has not commenced operations, in addition to the information referred to above, the following further information is also required:
 - a) a description of the project and its history since conceptualization;
 - b) starting date and expected date of completion;
 - c) time by which such project shall become commercially operational;
 - d) expected return on total capital employed in the project; and
 - e) funds invested or to be invested by the promoters distinguishing between cash and non-cash amounts;

In case of investment through transfer of liabilities from associated company or associated undertaking – Regulation 3(1)(c)

- (i) name along with the basis of relationship of the associated company / undertaking;



- (ii) description of liabilities to be transferred and consideration to be received by the company for assuming liabilities of associated company/undertaking;
- (iii) book value of liabilities to be transferred;
- (iv) purpose of such transfer of liabilities;
- (v) period, if any, for which such transfer of liabilities is to be made;
- (vi) salient features of all agreements entered into with the associated company/undertaking or with the financial institution(s) with regards to proposed transfer of liabilities;
- (vii) interest, direct or indirect, of directors, sponsors, majority shareholders and their relatives in the associated company/undertaking or the transaction under consideration; and
- (viii) any other important details necessary for the members to understand the transaction.

Regulation 3(2)

Apart from the above the above a listed company is required to simultaneously dispatch a copy of the aforesaid notice and the statement of material facts to the head office of the SECP, through fax / e-mail and courier service.

DISCLOSURE OF INTEREST – REGULATION 4(1)

Under this section the investing company is required to disclose, alongwith the notice of general meeting seeking members’ approval pursuant to section 208 of the Ordinance, interest of sponsors or directors of associated company / undertaking if the said person(s) are also a member of the investing company.

Regulation 4(2)

If the decision to make investment is not implemented either fully or partially till the holding of subsequent general meeting(s), the status of the decision should be explained to the members through a statement containing the following details:

- a) total investment approved;



- b) amount of investment made to date;
- c) reasons for not having made complete investment so far where resolution required it to be implemented in specified time; and
- d) material change in financial statements of associated company / undertaking since date of the resolution passed for approval of investment in such company.

INSPECTION OF AUDITED FINANCIAL STATEMENTS BY MEMBERS (REGULATION 5)

This regulation requires the investing company to make available, audited latest annual financial statements of the associated company/undertaking along with the latest reviewed financial statements, if any, for inspection of the members in the general meeting called for considering investment decisions pursuant to section 208 of the Ordinance.

CONDITIONS AND RESTRICTIONS APPLICABLE TO INVESTING COMPANY (REGULATIONS 6, 7 and 8)

The investing company is required to comply with the following conditions and restrictions:

In case of making investment in unlisted equity securities of associated companies / associated undertakings – Regulation 6(1)

The fair value for such securities shall be determined based on generally accepted valuation techniques and latest audited financial statements of the associated company / undertaking by:

- (i) a chartered accountant firm, having a satisfactory rating under the QCR (Quality Control Review Program) of ICAP (Institute of Chartered Accountants of Pakistan); or
- (ii) a NBFC (Non-Banking Finance Company) licensed by the Commission to carry out the business of investment finance services having a minimum rating of “A+” or equivalent by a credit rating company registered with the Commission, and has been in operation for at least five years.

Regulation 6(2)

If the price to be paid for unlisted equity securities is different from the fair value determined as above, an explanation along with justification, reasons and basis of determination of price is required to be disclosed to the members.



Regulation 6(4)

Once the offer for issue of shares has been announced by the associated company / undertaking, the share deposit money shall be transferred for equity investment.

Penalty:

The associated company / undertaking is required to issue shares within ninety (90) days of transfer of share deposit money; otherwise such share deposit money shall be treated as loan and interest / mark-up thereon shall be charged from the date of transfer of funds in accordance with the provisions of section 208 of the Ordinance.

In case of making investment by way of loans and advances in associated companies / associated undertakings – Regulation 7(1)

- (a) If the investing company has no borrowings, the rate of return on loans / advances shall not be less than KIBOR (Karachi Inter Bank Offered Rate) for the relevant period: except in case of a company using Shariah compliant mode of financing, in which case the transactions shall be structured in such a way that the rate of return on such facilities is not less than that earned by Islamic Financial Institutions in Pakistan on similar facilities during the corresponding time period;
- (b) In case of unfunded facilities (for example a guarantee, letter of indemnity, etc.) the rate of return shall be determined based on the rate of interest, mark-up, profit, fees or commission etc., as the case may be, charged by commercial banks or Islamic Financial Institutions on similar unfunded facilities;
- (c) Interest, mark-up, profit, fees or commission etc., as the case may be, shall be recovered periodically by the investing company in line with the standard terms normally applied by the commercial banks or the Islamic Financial Institutions on similar facilities extended to the borrowers;
- (d) The company shall not invest in its associated company / undertaking by way of loans or advances except in accordance with an agreement in writing and such agreement shall *inter-alia* include the terms and conditions specifying the nature, purpose, period of the loan, rate of interest, mark-up, profit, fees or commission, repayment schedule for principal and interest, mark-up, profit, fees or commission, penalty clauses in case of default or late repayments and security for the loan in accordance with the approval of the members in the general meeting; and
- (e) The company shall not extend to its associated company / undertaking any loan or advance as



running finance, revolving line of credit or any other similar facility for a period beyond one year provided that members may approve renewal of such loan or advance.

Other conditions and restrictions – Regulation 8

Regulation 8(1)

The approval unless specifically authorised by the members in the general meeting, of investment in associated companies / undertakings shall be valid for a period of twelve (12) months and shall stand lapsed after such period.

Regulation 6(3)

In case the approval is granted by the members for investment in securities of an associated company / undertaking up to a certain limit, such approved limit shall stand exhausted upon the investment reaching that limit on a cumulative basis, whether such investment is made as a whole or on a piecemeal basis and such approval shall not be valid for any recurring investment even after divestment of the securities acquired by it in pursuance of the aforesaid approval.

Regulation 8(2)

This sub-regulation further requires that under the following instances unless such loan has been rescheduled with the approval of special resolution of the members of the investing company no further investment in its associated company / undertaking can be made; i.e.:

- (a) where previous investment has been written off by the investing company; or
- (b) where the associated company / undertaking is already indebted to the investing company and has failed to repay the loan or advance including interest, mark-up, profit, fees or commission etc. thereon as per schedule or has failed to comply with any of the terms and conditions of the agreement in this regard,.

REGISTER OF INVESTMENTS IN ASSOCIATED COMPANIES/UNDERTAKING (REGULATIONS 9)

As per this regulation the investing company, is required to maintain at all times at its registered office, a register showing separately investment in each associated company / undertaking including:

- investment in securities;
- loans and advances, guarantee or security given;
- Investment through transfer of liabilities etc.

Investment in Associates



Further the said register shall also at least contain the following information:

- (a) the name of the associated company / undertaking;
 - (b) amount, terms and purpose of the investment, loan, security or guarantee;
 - (c) date of investment;
 - (d) date of providing guarantee or security in connection with a loan; and
 - (e) particulars relating to repayment of principal, mark-up, other monetary receipts, disposal of investment, redemptions etc.
- The above particulars shall be entered chronologically in the register and such register shall be open for inspection pursuant to the provisions applicable to inspection of register under the Ordinance.



Result Assured Services for Growth

The Impact is the official newsletter of Riaz Ahmad, Saqib, Gohar & Co. Chartered Accountants.

This document reflects our understanding of the subject. RASG recommends that reference should be made to the precise wording of the statute and professional advice should be sought before acting upon.

Corporate Office

5 – Nasim, C.H.S Major Nazir Bhatti Road,
Off: Shaheed-e-Millat Road, Karachi.
Tel: (92-21) 34945427, 34946112, 34931736
Fax: (92-21) 34932629
Email: rasgkhi@rasgco.com, rasg@super.net.pk



A Member of
AGN International Ltd

Lahore:

Room no. 17, 5th Floor,
Davis Hynes,
Davis Road, Lahore.
Tel: (92-42) 36316430, 36316431
Fax: (92-42) 36316429
Email: rasglhr@rasgco.com

Faisalabad:

First Floor, Al Fateh Plaza,
Plot No. 475/D, D-Ground,
Peoples Colony, Faisalabad.
Tel: (92-41) 8549532, 8549632
Fax: (92-41) 8549732
Email: rasgfsld@rasgco.com

Islamabad:

Room No. 14, 3rd Floor,
Ahmed Centre, Plot No. 35,
Sector I-8 Markaz, Islamabad.
Tel: (92-51) 4864537-8
Fax: (92-51) 4864539
Email: rasgisld@rasgco.com