



# **THE LISTED COMPANIES (SUBSTANTIAL ACQUISITION OF VOTING SHARES AND TAKEOVERS) ORDINANCE, 2002**



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**THE PAKISTAN CODE**

# THE LISTED COMPANIES (SUBSTANTIAL ACQUISITION OF VOTING SHARES AND TAKEOVERS) ORDINANCE, 2002

ORDINANCE NO. CIII OF 2002

AN  
ORDINANCE

[29<sup>th</sup> Oct, 2002]

*to provide for substantial acquisition of voting shares and takeovers of listed companies*

WHEREAS it is expedient to provide for a fair and equal treatment to all the investors as well as a transparent and efficient system for substantial acquisition of voting shares and takeovers of listed companies and for matters ancillary thereto or connected therewith;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action;

Now, THEREFORE, in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, and Provisional Constitution Order No. 1 of 1999, read with the Provisional Constitution (Amendment) Order No.9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:—

## CHAPTER I PRELIMINARY

**1. Short title, extent and commencement.**—(1) This Ordinance may be called the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Ordinance, 2002.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

**2. Definitions.**—(1) In this Ordinance, unless there is anything repugnant in the subject or context,—

- (a) “acquirer” means any person who, directly or indirectly, acquires or has proceeded to acquire voting shares in the target company, or acquires or has proceeded to acquire control of the target company, either by himself or through any person acting in concert;
- (b) “Commission” means the Securities, and Exchange Commission of Pakistan established under the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);
- (c) “control” includes the right to appoint majority of directors or to control management or policy decisions, exercisable by a person individually or through any person acting in concert, directly or indirectly, whether by virtue of his shareholding, management right, shareholders agreement, voting agreement or otherwise;

- (d) “financial institution” means an institution, other than a Banking Company as defined in the Banking Companies Ordinance, 1962 (LVII of 1962), notified as such by the Commission either specifically or generally and shall include such other institutions or companies notified by the Federal Government as financial institutions;
- (g) “listed company” means a company or a body corporate whose voting shares are listed on a stock exchange;
- (h) “manager to the offer” means a manager appointed under section 7;
- (i) “offer period” means the period from the date of public announcement of public offer to the date of closure of public offer or earlier withdrawal thereof;
- (j) “person acting in concert” means a person who operates with the acquirer to acquire voting shares or control of the target company;
- (k) “prescribed” means prescribed by rules <sup>1</sup>[or regulation] made under his Ordinance;
- <sup>1</sup>[(l) [\* \* \* \* \*]]
- (m) “public announcement” means public announcement of offer or intention to be made under section 5, section 6 or section 8, as the case may be, and includes any announcement of any competitive bid for acquisition of voting shares of a target company;
- (n) “public offer” means the public offer for acquisition of voting shares of a target company and includes any competitive bid or bids made for this purpose;
- (o) “relative” means spouse, lineal ascendants and descendants;
- (p) “voting shares” means the shares in the share capital of a listed company having voting rights; and
- (q) “target company” means a listed company whose voting shares or control are directly or indirectly acquired or intended to be acquired.

(2) All other expressions used but not defined herein shall have the same meanings as are assigned to them in the Securities and Exchange Ordinance, 1969 (XVII of 1969), or the Companies Ordinance, 1984 (XLVII of 1984).

**3. Ordinance not to apply to certain transactions.** <sup>1</sup>[(1)] <sup>1</sup>[Except as provided otherwise in sub- section (2), nothing] contained in this Ordinance shall apply to—

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<sup>1</sup>Ins., omitted, renumbered and subs. by Act I of 08, s. 19 (w.e.f. 1-7-8).

- (a) allotment of voting shares in pursuance of a pre-public issue or public issue;
- (b) allotment of voting shares pursuant to a right issue <sup>1</sup>[except voting shares allotted and issued under sub-section (7) of section 86 of the Companies Ordinance, 1984 (XLVII of 1984)]
- (c) allotment of voting shares to the underwriters pursuant to any underwriting agreement;
- (d) acquisition of voting shares in the ordinary course of business by banks and financial institutions as enforcement of security;
- (e) acquisition of voting shares by succession or inheritance;
- <sup>1</sup>[(f) \* \* \* \* \*]
- (g) a scheme of arrangement or reconstruction including amalgamation or merger or de-merger under any law for the time being in force;
- (h) acquisition of voting shares in companies whose voting shares are not listed on any stock exchange;
- (i) exercise of option by a bank or a financial institution in pursuance of a conversion option;
- (j) sale of shares in consequence of privatization of a unit or its management rights within the meaning of the Privatization Commission Ordinance, 2000 (LII of 2000);
- (k) sale of shares in consequence of any on-going negotiations on the commencement of this Ordinance provided that the negotiations are finalized and agreement reached within thirty days of such commencement; <sup>1</sup>[\*]
- (l) existing shares held by a person on the date of commencement of this Ordinance <sup>1</sup>[;]
- <sup>1</sup>[(m) transfer of voting shares to a person's relatives without monetary consideration;
- (n) acquisition of voting shares in the ordinary course of business by CFS financiers acting as financiers;
- (o) a scheme of rehabilitation of a company approved by the Commission;
- (p) transfer by sponsors of a holding company to such holding company within two years of incorporation of holding company, voting shares of such listed company or companies held by the sponsors on the date of incorporation of the holding company, which will after the transfer of such shares become subsidiary or subsidiaries of the said holding company; and

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<sup>1</sup>added, omitted and Subs. by Act I of 08, s. 19 (w.e.f. 1-7-8).



- (q) acquisition of voting shares by a strategic investor in case of disinvestment by by existing shareholders of a stock exchange pursuant to the demutualization process.]

<sup>1</sup>[(2) After the acquirer acquires voting shares pursuant to clauses (a), (b), (c), (d), (e), (g), (i), (j), (m), and (o) sub-section (1) the acquirer shall make a disclosure of the acquisition in the prescribed manner.]

## **CHAPTER II**

### **DISCLOSURE OF SHAREHOLDING IN A LISTED COMPANY**

**4. Acquisition of more than ten per cent voting shares of a company.**—(1) Any acquirer who acquires voting shares, which (taken together with voting shares, if any, held by the acquirer) would entitle the acquirer to more than ten per cent voting shares in a listed company, shall disclose the aggregate of his shareholding in that company to the said company and to the stock exchange on which the voting shares of the said company are listed as provided in sub-section (2).

(2) The disclosure mentioned in sub-section (1), shall be made within two working days of,—

- (a) the receipt of intimation of allotment of voting shares; or
- (b) the acquisition of voting shares, as the case may be.

**Explanation.**—For the purposes of this section expression “acquisition” shall include purchases confirmed by the member of a stock exchange in accordance with sub-rule (4) of rule 4 of the Securities and Exchange Rules, 1971.

(3) Any acquirer may acquire additional voting shares in any period of twelve months after acquisition of voting shares pursuant to sub-section (1) without making disclosure as required by sub-section (1) in case the total acquisition does not exceed an aggregate of twenty-five per cent.

## **CHAPTER III**

### **SUBSTANTIAL ACQUISITION OF VOTING SHARES AND ACQUISITION OF CONTROL OF A LISTED COMPANY**

**5. Additional acquisition of voting shares.**—(1) No person shall, directly or indirectly, acquire—

- (a) voting shares, which (taken together with voting-hares, if any, held by such person) would entitle such person to more than twenty-five per cent voting shares in listed company; or
- (b) 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.

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<sup>1</sup>added by Act I of 08, s. 19 (w.e.f. 1-7-8).

(2) Before making announcement under sub-section (1), such person shall make disclosure in the manner specified in section 4.

**6. Consolidation of holdings.**— (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:

Provided that such acquirer shall not be required to make a fresh public announcement of offer within a period of twelve months from the date of the previous announcement.

(2) No acquirer shall acquire voting shares in excess of the quantity specified in the invitation of offer made by such acquirer and all additional or incremental acquisition beyond the preceding offer shall be valid only through further offer.

(3) Noting in this section shall apply to a person who has already acquired fifty-one per cent or more of the voting share or control in consequence of making a public announcement of the offer.

**7. Appointment of manager to the offer.**— (1) Before making any public announcement the acquirer shall appoint a bank, or financial institution, or a member of a stock exchange who is not an associate, or group, of the acquirer or the target company, as a manager to the offer.

(2) The manager to the offer shall be deemed to be the agent of the acquirer.

**8. Timing of the public announcement.**— (1) Before acquisition of voting shares beyond the threshold specified in section 5 or section 6, the acquirer shall, after giving notice to the Commission as required by sub-section (3) of section 9, make a public announcement of such an intention forthwith.

(2) In case of an acquirer acquiring Global Depository Receipts or American Depository Receipts which, when taken together with the voting shares, of any, already held by the acquirer, would entitle the acquirer to voting shares, exceeding the percentage specified in section 5 or section 6, the public announcement referred to in sub-section (1) shall be made not later than two working days before he acquires voting shares on such securities upon conversion or exercise of option as the case may be.

**9. Public announcement.**— (1) The public announcement shall 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 or Provinces in which the stock exchange, on which the target company is listed, is situated.

(2) The public announcement shall contain such information as may be prescribed.

(3) A copy of the public announcement shall be submitted to the Commission through the manager to the offer at least two working days before its issuance.

(4) Simultaneous with the submission of the public announcement to the Commission, the public announcement shall also be sent to all the stock exchanges on which the voting shares of the target company are listed for being notified on the notice board and on the automated information system thereof, and to the target company at its registered office for being placed before the board of directors of such company.

(5) A public offer under this Ordinance shall be deemed to have been made on the date on which the public announcement is made in any of the newspapers as required by sub-section (1).

**10. Contents of public offer, mode of payment and minimum offer price.**—The contents of the public offer, its submission to the Commission, the date to be specified for the public announcement, mode of payment and minimum offer price, shall be in such form and manner as may be prescribed.

**11. Public announcement and offer letter etc. not to contain misleading material.**—The public announcement, any other advertisement, circular, brochure, publicity material or offer letter issued in respect of, or in relation to, the acquisition of voting shares shall not contain any, misleading information.

**12. Number of voting shares to be acquired.**— (1) A public offer shall be made by the acquirer for such percentage as the <sup>1</sup>[Commission may prescribe].

(2) Where the number of voting shares offered for sale by the shareholders are more than the voting shares offered to be acquired by the acquirer, the acquirer shall, in consultation with the manager to the offer, accept the public offer or offers received from the shareholders on a proportional basis:

Provided that acquisition of voting shares from a shareholder shall not be less than the minimum marketable lot or the entire holding if it is less than the marketable lot.

**13. General obligations of the acquirer.**— (1) Within two working days of the public announcement, the acquirer shall send a copy of the proposed offer letter to the target company at its registered office address and all the stock exchanges, where the voting shares of the company are listed, and the Commission.

(2) The acquirer shall ensure that the offer letter is sent to all the shareholders of the target company whose names appear on the register of members of the company as on the date specified in the public announcement:

Provided that where the public announcement is made pursuant to an agreement to acquire voting shares or control of the target company, the offer letter shall be sent to the shareholders other than the parties to the agreement.

(3) A copy of offer letter shall be sent to—

- (a) the custodians of Global Depository Receipts or American Depository Receipts to enable such persons to participate in the open offer, if they are entitled to do so; and
- (b) the convertible security holders, where the period of conversion falls within the offer period.

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<sup>1</sup>Subs. and Ins. by Act I of 08, s. 19 (w.e.f. 1-7-8).



(4) The date of acceptance of a public offer shall be not later than the sixtieth day from the date of public announcement.

(5) In case the acquirer is a company <sup>1</sup>[whether incorporated in Pakistan or outside Pakistan], the public announcement, brochure, circular, offer letter or any other advertisement or publicity material issued to shareholders in connection with a public offer shall state that the directors accept the responsibility for the information contained in such documents:

Provided that if any of the directors desires to exempt himself from responsibility for the information in such documents, such director shall issue a statement to that effect together with reasons thereof <sup>1</sup>[in the public announcement of offer].

(6) Where a public offer is made conditional upon minimum level of acceptance, the acquirer may accept the acceptances even if such acceptances, put together, do not reach the minimum level so offered:

Provided that the acquirer may reject all such acceptances if the same do not reach a level indicated in the public offer.

(7) Persons, other than the acquirer, representing or having interest in the target company or an insider or a beneficial owner of more than ten per cent of the voting shares during the last twelve months, shall stand excluded and shall not participate in any matters concerning or relating to a public offer including any preparatory steps leading to the offer.

(8) On or before the date of issue of public announcement, the acquirer shall create a security as provided in this Ordinance.

(9) The acquirer shall ensure that firm financial arrangements for fulfilment of the obligations under the public offer and suitable disclosures in this regard have been made in the public announcement.

(10) The acquirer shall, within a period of thirty days from the date of the closure of public offer, complete all procedures relating to the public offer including payment of consideration to the shareholders who have accepted the public offer and for the purpose open a special count as provided in sub-section (1) of section 20:

Provided that where the acquirer is unable to make the payment to the shareholders who have accepted the public offer before the said period of thirty-days due to non-receipt of requisite statutory approvals, the Commission may, if satisfied that non-receipt of requisite statutory approvals was not due to any wilful default, neglect or failure of the acquirer to diligently pursue the applications for such approvals, grant extension of time for a period not exceeding thirty days in aggregate.

(11) In the event of withdrawal of public offer, a person shall not make any offer for acquisition of voting shares of the target company for a period of twelve months from the date of public announcement of withdrawal of public offer.

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<sup>1</sup> Ins. by Act I of 08, s. 19 (w.e.f. of 1-7-8).

(12) In the event of non-fulfilment of obligations under Chapter III or Chapter IV of this Ordinance, a person shall not make any offer for acquisition of voting shares of any listed company for a period of twelve months from the date of closure of public offer.

(13) Where the acquirer has not either in the public announcement or in the offer letter, stated his intention to dispose of the undertaking or a sizeable part thereof, of the target company except in the ordinary course of business of the target company, the acquirer, where he has acquired control of the target company, shall be debarred from disposing of the undertaking or a sizeable part thereof, of the target company for a period of two years from the date of acquisition of the control.

**14. General Obligations of the Board of Directors of the target company.—** (1) The board of directors of the target company, during the offer period, shall not—

- (a) sell, transfer, or otherwise dispose of or enter into an agreement for sale, transfer, or for disposal of the undertaking or a sizeable part thereof, not being sale or disposal of assets in the ordinary course of business of the company or its subsidiaries;
- (b) encumber any asset of the company or its subsidiary;
- (c) issue any right or bonus voting shares during the offer period; or
- (d) enter into any material contract.

(2) The target company shall furnish to the acquirer, within seven days of the request of the acquirer or within seven days from the specified date mentioned in the public announcement, whichever is later, a list of convertible Security holders as are eligible for participation under clause (b) of sub-section (3) of section 13 containing name address, shareholding and folio number, and of those persons whose applications for registration of transfer of the securities are pending with the company.

(3) Once the public announcement has been made, the Board of Directors of the target company shall not appoint an additional director or fill in any casual vacancy on the Board of Directors, by any person representing or having interest in the acquirer till the date of certification by the manager to the offer as provided under sub-section (6).

(4) The Board of Directors of the target company may, if it so desires, send its unbiased comments and recommendations on the public offer to the shareholders:

Provided that for any misstatement, or for concealment of material information, the directors shall be liable to penalty as provided in this Ordinance.

(5) The board of directors of the target company shall facilitate the acquirer in verification of securities tendered for acceptance.

(6) Upon fulfilment of all obligations by the acquirer under this Ordinance as certified by the manager to the offer, the board of directors of the target company shall transfer the securities acquired by the acquirer, whether under an agreement or from open market purchases, in the name of the acquirer.

(7) The target company shall allow such changes in the board of directors as would give the acquirer proportionate representation on the board or control of the company notwithstanding anything contained in the Companies Ordinance, 1984 (XLVII of 1984).

(8) Where an acquirer, in compliance with the provisions of this Ordinance, has acquired at least thirty per cent of the voting shares of the target company, he shall be entitled to a proportionate representation on the board of directors of the target company as hereinafter provided.

(9) The acquirer shall serve a notice on the target company together with evidence of his voting power so acquired and a copy of such notice shall also be submitted of the Commission.

(10) On receipt of notice as specified in sub-section (9), the board of directors of the target company shall cause a meeting of the board to be held within ten days from the receipt of the notice under sub-section (9).

(11) The Board of Directors of the target company may fill any casual vacancy so created by the resignation of one or more directors with mutual consent to accommodate the acquirer on the board in accordance with his entitlement.

(12) In case the acquirer does not get a proportionate representation on the board of directors of the target company or the number of casual vacancies so created to complete the board on the basis of proportional representation are not sufficient, the acquirer may serve a notice on the target company for holding of fresh elections and shall submit a copy of such notice to the Commission forthwith.

(13) The board of directors of the target company shall cause the election of directors to be held within thirty days from the receipt of the notice under sub-section (12).

(14) The election of directors of the target company shall be held in accordance with the provisions of sub-sections (2) to (5) of section 178 of the Companies Ordinance, 1984 (XLVII of 1984).

(15) The board of directors so elected shall hold office during the remainder of the term of the outgoing directors of the target company.

(16) Any irregularity in the election of directors so held may be brought to the notice of the Commission either by the management of the target company or by the acquirer within seven days of the date of such election.

(17) The Commission may declare the election, so held, null and void if it is satisfied that certain irregularities did exist in the holding of the election and may order the holding of fresh election under the supervision of an independent person to be appointed by the Commission for such purpose.

(18) In case fresh elections are held as specified in sub-section (17), the Commission may impose such penalty on the outgoing directors in their individual capacity as it may deem fit and such penalty shall in no case be debited to the company's account.

**15. General obligations of the manager to the offer.**— <sup>1</sup>[(1)] Before the public announcement is made, the manager to the offer shall—

- (a) ensure that the acquirer is able to implement the public offer;
- (b) ensure that the provision relating to security referred to in section 19 has been made;
- (c) ensure that firm arrangements for funds and money for payment through verifiable means to fulfil the obligations under the public offer have been made;
- (d) ensure that the public announcement is made in accordance with section 9;
- (e) furnish to the Commission a due diligence certificate which shall accompany a copy of the proposed offer letter;
- <sup>1</sup>[(f) \* \* \* \* \*]
- (g) ensure that the contents of the public announcement and offer letter are true, fair and adequate and based on reliable sources, quoting the source wherever necessary;
- <sup>1</sup>[(h) \* \* \* \* \*]
- <sup>1</sup>[(i) \* \* \* \* \*]
- <sup>1</sup>[(j) \* \* \* \* \*]

<sup>1</sup>[(2) The manager to the offer shall,—

- (a) on the day of the public announcement of offer ensure that the proposed public announcement of offer is filed with the Commission, target company and also sent to the stock exchange on which the voting shares of the target company are listed in accordance with this Ordinance;
- (b) upon fulfilment of the necessary obligations by the acquirer under this Ordinance and the rules and regulations, cause the release of the balance amount of the security to the acquirer; and
- (c) after ensuring compliance with the provisions of the Ordinance and any other laws or rules and regulations as may be applicable, send a report to the Commission within forty five days from the date of closure of public offer or earlier with drawal thereof.]

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<sup>1</sup>renumbered, omitted & added by Act I of 08, s. 19 (w.e.f. 1-7-8).

**16. Procedure for making competitive bid.**—(1) Any person, other than the acquirer who has made the first public announcement, who is desirous of making a competitive bid, shall, within twenty-one days of the public announcement of the first offer, make a public announcement of his offer for acquisition of the same voting shares of the target company.

(2) No public announcement of a competitive bid shall be made after twenty-one days from the date of public announcement of the first offer.

**Explanation.**—For the purpose of this section a bid shall be deemed to be competitive only if it offers a higher purchase price.

(3) A competitive bid shall not be for less than the number of voting shares for which the earlier public offer has been made.

(4) Upon the public announcement of a competitive bid the acquirer, who has made a public announcement of the earlier offer, shall have the option to make another announcement-

- (a) revising the public offer; or
- (b) withdrawing the public offer with the prior approval of the Commission.

Provided that if no such announcement is made within ten days of the public announcement of the competitive bid, the earlier offer on the original terms shall continue to be valid and binding on the acquirer who has made the earlier public offer, except that the date of closing of such public offer shall stand extended to the date of closure of public offer under the last subsisting competitive bid.

(5) The provisions of this Ordinance shall, mutatis mutandis, apply to the competitive bid made under sub-section (1).

(6) An acquirer who has made a public announcement, and has not withdrawn his public offer in terms of sub-section (4), shall have the option to make an upward revision of his offer in respect of the price and the number of voting shares to be acquired at any time within seven working days prior to the date of closure of the last subsisting public offer without changing any other terms and conditions of the said public offer.

(7) Any upward revision made in terms of sub-section (6), shall be made only on the following conditions, namely:—

- (a) the making of a public announcement in respect of such changes or amendments in all the newspapers in which the earlier public announcement was made,
- (b) the informing of the Commission, the stock exchange on which the voting shares of the target company are listed, and the target company at its registered office, simultaneous with the issue of public announcement referred in clause (a); and
- (c) the increase in the value of the security as provided under sub-section (3) of section 19.



(8) Where there is a competitive bid, the date of closure of the earlier bid, as also the date of closure of all the subsequent competitive bids, shall be the date of closure of public offer under the last subsisting competitive bid and the public offers under all the subsisting competitive bids shall close on the same date.

**17. Upward revision of Offer.**— Irrespective of whether or not there is a competitive bid the acquirer, who has made the public announcement, may make upward revision in his offer in respect to the price and the number of voting shares to be acquired at any time up to seven working days prior to the date of the closure of public offer:

Provided that any such upward revision of the public offer shall be made only on the following conditions, namely:—

- (a) the making of a public announcement in respect of such changes or amendments in all the newspapers in which the earlier public announcement was made;
- (b) the informing of the Commission, the stock exchange on which the voting shares of the target company are listed, and the target company at its registered office simultaneous with the issue of public announcement referred in clause (a); and
- (c) the increase in the value of the security as provide under sub-section (3) of section 19.

**18. Withdrawal of public offer.**— (1) A public offer, once made, may be withdrawn—

- (a) if the withdrawal is consequent upon any competitive bid;
- (b) if the sole acquirer, being a natural person, has died; or
- (c) in such circumstances as may be prescribed.

(2) In the event of withdrawal of the public offer under any of the circumstances specified under sub-section (1), the acquirer, or the manager to the offer, shall—

- (a) make a public announcement in all the newspapers in which the public announcement was made indicating reasons for withdrawal of the public offer; and
- (b) inform the Commission, the stock exchange on which the voting shares of the target company are listed, and the target company at its registered office, simultaneous with the issue of such public announcement.

**19. Security to be furnished by the acquirer.**— (1) The acquirer shall furnish a security for performance of his obligations on such terms and conditions as may be prescribed.

(2) The total consideration payable under the public offer shall be calculated assuming full acceptance irrespective of whether the consideration for the public offer is payable in cash or otherwise.

(3) In case there is any upward revision of offer, consequent upon a competitive bid or otherwise, the value of the security shall be increased as may be prescribed under sub-section (1).

(4) The security furnished shall be released in such manner as may be prescribed.

**20. Procedure for payment and delivery of voting shares.**— (1) For the amount of consideration payable in cash, the acquirer shall, within a period of twenty-one days from the date of closure of the public offer open a special account with a scheduled bank and deposit therein such sum as would, together with ninety per cent of the security furnished under section 19, make up the entire sum due and payable to the shareholders as consideration for acceptances received and accepted in terms of the public offer.

(2) The unclaimed balance in the account referred to in sub-section (1) shall, at the end of six months from the date of deposit thereof, be refunded to the acquirer in such manner as may be prescribed.

(3) In respect of consideration payable by way of exchange of securities, the acquirer shall ensure that the securities are actually issued and dispatched to the shareholders.

## **CHAPTER IV ENQUIRY AND RELATED MATTERS**

**21. Enquiry.**— The Commission may appoint one or more persons as enquiry officer or officers to undertake an enquiry for any of the following purposes, namely:—

- (a) to enquire into the complaints received from the investors holding not less than one-tenth of the total voting powers in a target company, on any matter having a bearing on the allegations of substantial acquisition of voting shares and takeovers;
- (b) to enquire *suo motu* upon its own knowledge or information, in the interest of securities market or the investors, for any breach of the provisions of this Ordinance;
- (c) to ascertain whether the provisions of this Ordinance are being complied with:

**22. Notice before enquiry.**— (1) Before ordering an enquiry under section 21, the Commission shall give not less than seven days' notice to the acquirer, the seller, the target company, the manager to the offer as the case may be.

(2) During the course of an investigation, the acquirer, the seller, the target company, the manager to the offer, against whom the investigation is being carried out shall be bound to discharge his obligation as provided in this Ordinance and the rules made thereunder.

**23. Obligations on enquiry by the Commission.**— (1) It shall be the duty of the acquirer the seller, the target company or the manager to the offer, whose affairs are being enquired into and of every director officer and employee thereof, to produce to the enquiry officer such books,

accounts, securities records and other documents in its custody or control and furnish to the enquiry officer such statement and information as he may, within such reasonable period as he may specify, require.

(2) The acquirer, the seller, the target company, the manager to the offer and the persons being enquired into shall allow the enquiry officer to have reasonable access to the premises occupied by such a person or by any other person on behalf of such a person and also extend reasonable facility for examining any books, records, documents and computer data in the possession of such a person and also provide copies of documents or other materials which, in the opinion of the enquiry officer, are relevant for the purposes of the enquiry.

(3) The enquiry officer, in the course of enquiry, may examine or record the statements of any director, officer or employee of the acquirer, the seller, the target company and the manager to the offer.

(4) It shall be the duty of every director, officer or employee of the acquirer, the seller, the target company and the manager to the offer to give the enquiry officer all assistance in connection with the enquiry which he may require.

**24. Submission of report and communication of findings.**— (1) The enquiry officer shall, as soon as possible, on completion of the enquiry, submit report to the Commission.

(2) The Commission shall, after consideration of the enquiry report, communicate the findings of the enquiry officer to the acquirer, the seller, the target company, the manager to the offer as the case may be.

(3) On receipt of the reply from the acquirer, the seller, the target company or, as the case may be, the manager to the offer, the Commission may direct them to take such measures as it may deem fit in the interest of the securities market and for due compliance with the provisions of this Ordinance and rules made thereunder.

**25. Directions by the Commission.**— The Commission may, in the interests of the securities market, give such directions as it deems fit including—

- (a) directing the person concerned not to further deal in securities;
- (b) prohibiting the person concerned from disposing of any of the securities acquired in violation of provisions of this Ordinance;
- (c) directing the person concerned to sell the voting shares acquired in violation of the provisions of this Ordinance; and
- (d) taking such action against the person concerned as may be necessary.

**26. Penalties for non-compliance.**— (1) In the event of withdrawal of public offer, except as provided in section 18, or contravention of any provision of this Ordinance, the acquirer and any person acting in concert shall stand debarred as acquirers for the next three years.

(2) In case the board of directors or management of the target company contravenes any provision of this Ordinance, the directors, the chief executive and the company and secretary, on a finding by the Commission, shall stand disqualified to hold any such office in a listed company for the next two years.

(3) If any person—

- (a) refuses or fails to furnish any document, paper or information which he is required to furnish by, or under, this Ordinance;
- (b) refuses or fails to comply with any order or direction of the Commission made or issued under this Ordinance; or
- (c) contravenes or otherwise fails to comply with the provisions of this Ordinance,

the Commission may, if satisfied, after giving the person an opportunity of being heard, that the refusal, failure or contravention was willful, impose penalty which may extend to <sup>1</sup>[fifty] million rupees as may be specified in the order and, in the case of a continuing default, a further sum calculated at the rate of <sup>1</sup>[two hundred] thousand rupees for every day after the issue of such order during which the refusal, failure or contravention continues.

(4) Any sum directed to be paid under sub-section (3) <sup>1</sup>[may] be recoverable as an arrear of land revenue.

**27. Delegation of powers.**— The Commission may, subject to such conditions and limitations as it may deem fit to impose, delegate all or any of its powers and functions under this Ordinance to a Commissioner appointed under section 5 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997).

**28. Relaxation of provisions of the rules.**— Where the Commission is satisfied that it is not practicable or expedient to comply with any requirement of the rules made hereunder in a particular case, the Commission may, in consultation with the Federal Government and for reasons to be recorded, relax such requirement subject to such conditions as it may deem fit.

**29. Power of the Commission to make rules.**— The Commission may, in consultation with the Federal Government and by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance.

**<sup>1</sup>[29A. Power of the Commission to make regulations.** —(1) The Commission may, by notification in the official Gazette, make such regulations, not inconsistent with provisions of this Ordinance and the rules, made as may be necessary to carry out the purposes of the Ordinance and incidental and connected matters:

Provided that the power to make regulations conferred by this section shall be subject to the condition of previous publication and before making any regulations the draft thereof may be published in the manner considered most appropriate by the Commission for eliciting public opinion thereon within a period of not less than fifteen days from the date of publication.

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<sup>1</sup> Subs. and Ins. by Act I of 08, s. 19 (w.e.f. 1-7-8).

(2) Without prejudice to the generality of sub-section (1), the Commission may make regulations for or with respect to—

- (a) the form, manner, timing and submission of offers letters;
- (b) public announcements;
- (c) public offers;
- (d) independent advice to shareholders;
- (e) the obligations of directors;
- (f) obligations and restrictions of the acquirer and manager to the offer;
- (g) the standard of care and responsibility;
- (h) the timing and content of documents;
- (i) the offer timetable;
- (j) asset valuations and offer pricing and mode of payment;
- (k) restrictions on dealings before and during the offer;
- (l) disclosure of dealings;
- (m) security to ensure completion of a takeover offer;
- (n) acceptable securities;
- (o) mandatory offers, offer size and acquisition;
- (p) conditional offers;
- (q) competitive bids;
- (r) conduct of enquiry; and
- (s) any other matter that this Ordinance requires for regulations to be made or for any matter the Commission considers necessary to ensure the proper conduct of takeovers.

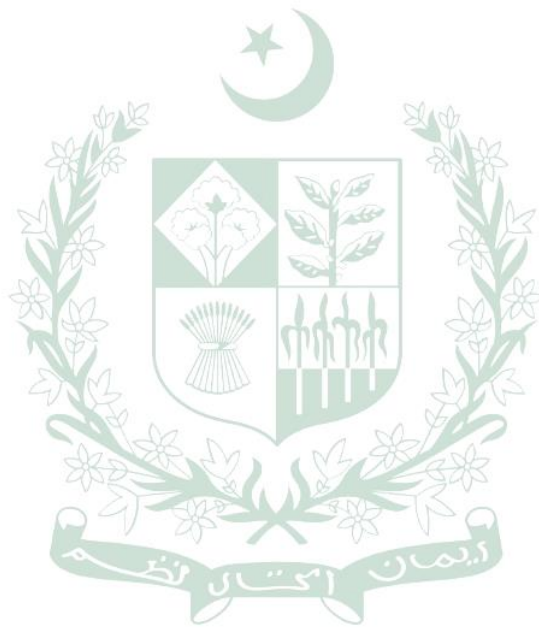
(3) Any regulation made under this section may provide that a contravention thereof shall be punishable with a fine which may extend to thirty million rupees and, where the contravention is a continuing one, with a further fine which may extend to one hundred thousand rupees for every day after the first during which such contravention continues.



**29B. The power of the Commission to issue directives, circulars.**— (1) guidelines, etc. The Commission may issue such directives, 1 codes, guidelines, circulars or notifications as are necessary to carry out the purposes of this Ordinance, the rules and regulations made thereunder.]

**30. Ordinance to override other laws etc.**— The provisions of this Ordinance shall have effect notwithstanding anything contained in the Companies Ordinance, 1984 (XLVII of 1984), or any other law for the time being in force or in any charter, statute or memorandum or articles of association or in any applicable document or resolution.

**31. Removal of difficulties.**— If any difficulty arises in giving effect to any provision of the Ordinance, the Federal Government may make such order, not inconsistent with the provisions of this Ordinance, as may appear to it to be necessary for the purpose of removing the difficulty.



**THE PAKISTAN CODE**