

LAW MATTERS SERIES

LEGAL GUIDE TO ACQUIRING AN ASSET MANAGEMENT COMPANY

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NB: For the purposes of this guide we are assuming that the Parent Company which owns the Target Asset Management Company is a listed company ("Parent").

Akhund Forbes advised Arif Habib Investments Limited on its merger with MCB Asset Management Company Limited in what remains one of the largest mergers of two asset management companies in Pakistan.

Disclaimer:

This guide is not exhaustive and the opinions or legal interpretations contained in it are circumstantial and may vary under different situations. This guide or its contents should not be relied upon as legal advice. Each transaction is different and specific legal advice should be sought by stakeholders involved in any transaction. Akhund Forbes and its partners shall not be responsible for any reliance placed on this guide by any recipient or person without prior consultation with Akhund Forbes and its partners. Furthermore, this legal guide stands correct as at 15 October 2016 and Pakistan laws may change in relation to matters covered in this guide.

Acquisition of Parent's equity stake in the Target AMC

If an acquirer is acquiring the Parent's equity stake in the Target AMC, the following steps will, inter alia, broadly need to be taken:

- Parent and the acquirer shall circulate notice for convening meeting of their respective Boards, in compliance with the provisions of their respective Charters, Ordinance and PSX Rule Book (in the case of the Parent and in the case of the acquirer if it is also listed), to approve the acquisition in-principle, to appoint advisors in this connection and to authorise representatives for the aforesaid matters.
- The Parent and the acquirer shall convene a quorate meeting of their respective Boards in compliance with the provisions of their respective Charters and the Companies Ordinance, 1984 to approve the acquisition in-principle, to appoint advisors in this connection and to authorise representatives for the aforesaid matters. The Parent will also comply with the relevant requirements of the PSX Rule Book in relation to holding its Board meeting (including book closure). If the acquirer is listed, it will also comply with the requirements of the PSX Rule Book.
- The advisors will conduct due diligence on the Target AMC. Based on their findings, the value of the shares to be acquired in the Target AMC will be determined and the share purchase agreement will be drafted.
- The Parent and the acquirer will convene a quorate meeting of their respective Boards in compliance with the provisions of their respective Charters and the Companies Ordinance, 1984, to approve execution of the share purchase agreement, subject to SECP's consent to the acquisition. The acquirer will also approve submission of pre-merger clearance to the CCP for the acquisition, if the relevant thresholds are met and if none of the exemptions apply. The Parent, and if listed, the acquirer, will comply with the relevant requirements of the PSX Rule Book in relation to convening their respective Board meetings.
- The Parent, and the acquirer if it is listed, will comply with the relevant requirements of the PSX Rule Book in relation to disclosure, intimation and dissemination of material information in relation to the acquisition.
- If the Target AMC comprises a sizeable part of the Parent's undertakings, the directors of the Parent shall not, except with the consent of the general meeting, either specifically or by way of an authorisation, sell their stake in the Target AMC to the acquirer. The Parent will comply with the necessary provisions of its Charter, the Companies Ordinance, 1984, PSX Rule Book and CDC Regulations in relation to holding the general meeting.

- SECP’s prior consent shall be obtained for sale or transfer of shares of the existing majority shareholders (Parent) and directors of the Target AMC.
- The acquirer shall comply with all other regulatory requirements applicable to it for the acquisition of the Target AMC.
- Execution of the share purchase agreement by the parties.
- Completion of the transfer of shares will take place in accordance with the share purchase agreement and subject to satisfaction of the conditions precedent.
- Post-acquisition, the Target AMC shall comply with the following procedure, laid down in the NBFC Rules 2003 and NBFC and Notified Entities Regulations 2008, for obtaining approval of any change of its directors or chief executive:
 - (a) in case the Board of Directors of the Target AMC decides to remove its chief executive before the expiration of his term of office or the chief executive decides to tender his resignation before the completion of his term of office or if the chief executive is replaced on completion of his term, the Target AMC shall inform the SECP at least one month before the decision along with reasons for the same: provided that the Target AMC shall, within this one month period,

submit an application complete in all respects, for obtaining approval for appointment of the new chief executive; (b) in case of election of directors in the Annual or Extraordinary General Meeting, the Target AMC shall, 10 days before the date of the meeting in which election of directors is to be held, submit an application for the individuals seeking to contest the elections whether they are retiring directors or otherwise; (c) in case of occurrence of any casual vacancy or reappointment of chief executive, the Target AMC must submit an application within 10 days of the occurrence of any casual vacancy or reappointment, as the case may be; and (d) the application shall be submitted in compliance with the requirements of the NBFC Rules 2003 and NBFC and Notified Entities Regulations 2008.

- The proposed directors, chief executive and chairman of the Board of Directors and the other executives must fulfil the terms and conditions mentioned in the fit and proper criteria and the other requirements stipulated in the NBFC Rules 2003 and NBFC and Notified Entities Regulations 2008. If the financial/chief accounting officer, internal auditor or statutory auditor are being replaced, the new appointees must fulfil the criteria specified in the NBFC Rules 2003 and NBFC and Notified Entities Regulations 2008.

Merger of an Asset Management Company (“Target AMC”) into another Asset Management Company (“Acquiring AMC”)

If the acquisition of the Target AMC is taking place through a merger i.e. the Target AMC will be merged into the Acquiring AMC owned by the acquirer or which may be the acquirer itself and which shall be the surviving entity (“**Merger**”), the following steps will, inter alia, broadly need to be taken:

- Parent and the acquirer shall **circulate notice** for convening meeting of their respective Board of Directors, in compliance with the provisions of their respective Charters, Companies Ordinance, 1984 (“**Ordinance**”) and PSX Rule Book (in the case of the Parent and in the case of the acquirer if it is also listed), to approve the merger in-principle, to appoint advisors in this connection and to authorise representatives for the aforesaid matters.
- The Parent and the acquirer shall **convene** a quorate meeting of their respective Boards to approve the merger in-principle and to appoint advisors in this connection and to authorise representatives for the aforesaid matters. The Parent and the acquirer will comply with the relevant provisions of their respective Charters and Companies Ordinance, 1984, in relation to holding their respective Board meetings. The Parent will also comply with the relevant requirements of the PSX Rule Book in relation to holding its Board meeting (including book closure). If the acquirer is listed, it will also comply with the requirements of the PSX Rule Book.
- The advisors will conduct due diligence on the Target AMC. Based on their findings, the valuation of the Merger will be determined and the Scheme of Arrangement of the Merger (“**Scheme**”) under S. 282L of the Companies Ordinance, 1984 (“**Ordinance**”) will be drafted.
- The Parent, and the acquirer if it is listed, will comply with the relevant requirements of the PSX Rule Book in relation to disclosure, intimation and dissemination of material information in relation to the Merger.
- If the Target AMC comprises a sizeable part of the Parent’s undertakings, the directors of the Parent shall not, except with the consent of the general meeting, either specifically or by way of an authorisation, sell their stake in the Target AMC to the acquirer. The Parent will comply with the necessary provisions of its Charter, the Companies Ordinance, 1984, PSX Rule Book and CDC Regulations in relation to holding the general meeting.
- The Target AMC and the Acquiring AMC will convene a quorate meeting of their respective Boards to approve (a) the Scheme, subject to SECP, CCP and their respective shareholders’ approvals; (b) valuation of the Merger; (c) convening of an EGM to approve the Scheme; (d) submission of a joint application to the SECP for approval of

the Merger under the NBFC Rules 2003 and acquiring management of the Collective Investment Schemes and any portfolios managed by the Target AMC under the NBFC and Notified Entities Regulations 2008 (“**SECP Pre Application**”); (e) submission of a joint application to the SECP for approval of the Merger and Scheme under the S. 282L of the Ordinance (“**SECP Merger Application**”); (f) submission of a pre-merger clearance to the CCP for the Merger if the relevant thresholds are met and if none of the exemptions apply¹; (g) appointment of representatives in connection with the aforesaid matters; and (h) authority of directors or other persons in connection with the aforesaid matters. The Acquiring AMC will also approve submitting applications to the SECP for increase in capital of the Acquiring AMC and change in name of the Acquiring AMC, if necessary. The Target AMC and the Acquiring AMC will comply with the relevant requirements of their respective Charters, Ordinance, and the PSX Rule Book if the Acquiring AMC is listed, in relation to holding their respective Board meetings.

- The Acquiring AMC will take relevant actions for change of its name and increase in authorised capital, if necessary.
- The Acquiring AMC will dispatch the CCP Merger Application, if required.

- The Acquiring AMC will dispatch the SECP Pre Application and obtain SECP’s approval prior to holding the Acquiring AMC’s EGM.
- Notice of the EGM will be given by both parties in accordance with S. 282L of the Ordinance and other relevant provisions of their respective Charters, the Ordinance, and PSX Rule Book if the Acquiring AMC is listed. Both parties will comply with the necessary provisions of the Ordinance, PSX Rule Book (if Acquiring AMC is listed) and CDC Regulations (if relevant) in relation to holding the EGM (including book closure).
- Quorate EGM of the Acquiring AMC shall be held. Following resolutions shall be passed by the requisite number of shareholders: a resolution approving the Merger and the Scheme, subject to approvals of CCP and SECP, and approving the valuation of the Merger; if necessary, a resolution approving change of the name of the Acquiring AMC, subject to approval of the Merger and the Scheme by the SECP and CCP and further subject to confirmation by the Registrar of the availability of this name and approval of the Registrar for the change of name; if necessary, a resolution approving increase in authorised share capital of the acquirer, subject to approval of the Merger and the Scheme by the SECP and CCP; a resolution appointing and

¹ To be decided whether the CCP application will be made jointly or singly

authorising a representative to carry out the Scheme and to approve and finalise any amendments to the Scheme required by SECP and CCP. If the Acquiring AMC is listed, copies of minutes and resolutions of the EGM to be circulated to PSX as well.

- Quorate EGM of the Target AMC shall be held. Following resolutions shall be passed by the requisite number of shareholders: a resolution approving the Merger and the Scheme, subject to approvals of CCP and SECP, and approving the valuation of the Merger; and a resolution appointing and authorising a representative to carry out the Scheme and to approve and finalise any amendments to the Scheme required by SECP and CCP.
- Parties will dispatch SECP Merger Application.
- The Acquiring AMC will file necessary statutory forms for increase in its capital and comply with S. 36 of the Companies Ordinance 1984, if relevant.
- After receiving SECP's approval to the Merger Application, parties to transmit a copy of SECP's order sanctioning the Scheme u/s 282L(4) to the Registrar of Companies
- The Target AMC will give 90 days' prior notice to the unit holders and trustees of its Collective Investment Schemes, of the Merger, and the relevant notice period to its clients

under its portfolio management agreements. NB: Timing for giving notice to be determined.

- Parties will carry out the Merger in accordance with the Scheme.
- The Acquiring AMC will file the Name Change Approval Application, if necessary, with the Registrar and obtain Registrar's approval of same, and will also file necessary statutory forms in connection therewith with the SECP.
- Post-Merger, the Acquiring AMC shall comply with the following procedures laid down in the NBFC Rules 2003 and NBFC and Notified Entities Regulations 2008, for obtaining approval of any change of its directors or chief executive:
 - (a) in case the Board of Directors of the Acquiring AMC decides to remove its chief executive before the expiration of his term of office or the chief executive decides to tender his resignation before the completion of his term of office or the chief executive is replaced on completion of his term, the Acquiring AMC shall inform the SECP at least one month before the decision along with reasons for the same: provided that the Acquiring AMC shall, within this one month period, submit an application complete in all respects, for obtaining approval for appointment of the new chief executive; (b) in case of election of directors in the

- Annual or Extraordinary General Meeting, the Acquiring AMC shall, 10 days before the date of the meeting in which election of directors is to be held, submit an application for the individuals seeking to contest the elections whether they are retiring directors or otherwise; (c) in case of occurrence of any casual vacancy or reappointment of chief executive, the Acquiring AMC must submit an application within 10 days of the occurrence of any casual vacancy or reappointment, as the case may be; and (d) the application shall be submitted in compliance with the requirements of NBFC Rules 2003 and NBFC and Notified Entities Regulations 2008.
- Any new directors, chief executive and chairman of the Board of Directors of the Acquiring AMC must fulfil the terms and conditions mentioned in the fit and proper criteria and the other requirements stipulated in the NBFC Rules 2003 and NBFC and Notified Entities Regulations 2008. If the financial/chief accounting officer, internal auditor or statutory auditor are being replaced, the new appointees must fulfil the criteria specified in the NBFC Rules 2003 and NBFC and Notified Entities Regulations 2008.
 - If the Acquiring AMC is listed, it will also comply with the relevant requirements of PSX Rule Book in relation to any changes in its Board of Directors, CFO, Company Secretary, Head of Internal Audit and in Committees of its Board.