

LAW MATTERS SERIES

LEGAL GUIDE FOR PUBLIC COMPANIES TO ESTABLISHING AN EMPLOYEES STOCK OPTION SCHEME IN PAKISTAN

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Introduction:

The Companies Ordinance, 1984 (“**Ordinance**”) allows a public company to issue further shares to its employees under an Employees Stock Option Scheme approved by the SECP, in accordance with the Public Companies (Employees Stock Option Scheme) Rules, 2001, made under the Ordinance.

Generally, Employees Stock Option Schemes are introduced by companies to attract talented and experienced resources from the market, retain and encourage high performing employees, improve the Company’s performance thereby increasing its shareholders’ value, reward the abilities and efforts of the employees, and to share the rewards of success of the company with the employees. By introducing an Employees Stock Option Scheme, the company is also able to increase its issued and paid-capital while maintaining a productive and motivated work force, and aligning the interests of the employees with those of the Company’s shareholders.

This guide aims to be a source of information for public companies which may wish to establish an Employees Stock Option Scheme for their employees.

NB: For the purposes of this guide, we are assuming that the company is listed on the PSX.

Akhund Forbes is currently advising two public listed companies on establishing their first Employees Stock Option Scheme.

Disclaimer

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Procedure to establish an Employees Stock Option Scheme (“ESOS”):

- **Step number 1**

- **Action:** The Company Secretary shall prepare and circulate Notice of the Board meeting for (a) approving setting up an ESOS in accordance with the Public Companies (Employees Stock Option Scheme) Rules, 2001 and the Guidelines for the Structuring and Offering of the Employees Stock Option Schemes, 2016, (b) constituting the Compensation Committee in accordance with the Public Companies (Employees Stock Option Scheme) Rules, 2001, (c) approving intimation notice to be sent to PSX (see Step number 5), (d) delegating powers to the Company Secretary/a committee to act in connection with setting up the ESOS, and (e) authorizing the Company Secretary to take all necessary and incidental actions in connection with the aforesaid business.

- **Parties Involved:** Company Secretary.

- **Step Number 2**

- **Action:** The Company Secretary shall convene the Board meeting through written notice for the matters specified in Step No. 1 and any other business, accompanied by a reasonable detailed agenda specifying the business to be conducted at the Board meeting, together with all relevant papers to be considered at that meeting.

- **Parties Involved:** Company Secretary.

- **Time:** Notice of the Board meeting shall be circulated not less than 7 days before the date of the meeting, in compliance with paragraph 5.19.5(a) of Chapter 5 PSX Rule Book or such greater period as may be provided in the Company’s Articles of Association.

- **Step Number 3**

- **Action:** Quorate Board meeting shall be conducted in accordance with the Company’s Articles or S. 193(1) of Ordinance, whichever

is greater. CFO and Company Secretary (who shall be secretary to the Board) shall attend the meeting pursuant to paragraph 5.19.10 of Chapter 5 of PSX Rule Book. The Company Secretary shall ensure that the proceedings are appropriately minuted in a fair and accurate summary and the Chairman shall ensure that the minutes are appropriately recorded and will initial the minutes, in compliance with paragraph 5.19.5(b) of Chapter 5 of PSX Rule Book and Ss. 173(1) and (2) of the Ordinance.

- **Parties Involved:** Company Secretary, CFO and Directors.

NB: The Company should consider whether the decision to launch the ESOS may materially affect the market price of the Company’s shares and, therefore, closed period is required pursuant to paragraph 5.19.15 of Chapter 5 of the PSX Rule Book and if any disclosure is required pursuant to S. 96 of the Securities Act 2015. If the decision to launch ESOS will affect the market price of its shares, the Company will also need to comply with dissemination requirement stipulated in paragraph 5.19.13(c) of Chapter 5 of the PSX Rule Book. The Company shall bear in mind, and comply with (where necessary), the disclosure requirements contained in S. 75 of the Futures Market Act, 2016.

- **Step Number 4**

- **Action:** The Company Secretary shall circulate a copy of the minutes of the Board Meeting to all Directors pursuant to S. 173(1) of the Ordinance.

- **Parties Involved:** Company Secretary.

- **Time:** Within 14 days of the date of the meeting.

- **Step Number 5**

- **Action:** The Company Secretary shall inform PSX of the decision to launch the ESOS, in compliance with paragraphs 5.6.1(a) and 5.8 of Chapter 5 PSX Rule Book.

- **Parties Involved:** Company Secretary.
- **Time:** Immediately after Step No. 3.
- **Step Number 6**
 - **Action:** Preparing the ESOS
 - **Parties Involved:** Company and the legal advisor (LA).
- **Step Number 7**
 - **Action:** Email ESOS to SECP for its soft approval.
 - **Parties Involved:** LA, SECP and Company.
 - **Time:** Approximately 30 days.

NB: It is not incumbent on the SECP to respond to emails or to accord soft approvals. The above time period is based on our last experience with the SECP.

- **Step Number 8**
 - **Action:** Prepare the Insider Policy.
 - **Parties Involved:** Compensation Committee.
 - **Time:** Whilst awaiting SECP's soft approval.
- **Step Number 9**
 - **Action:** Prepare the EGM Notice, draft resolutions and Statement of Material Facts in accordance with Ss. 160(1)(a) and (b), 161(2) and 164(1) of Ordinance.
 - **Parties Involved:** Company Secretary and LA.
 - **Time:** Whilst awaiting SECP's soft approval.
- **Step Number 10**
 - **Action:** Notice of the Board meeting for (a) approving the draft ESOS approved by SECP/ finalized with SECP, EGM Notice, draft resolutions and Statement of Material Facts, and Insider Policy, (b) convening EGM pursuant to S. 159(2) of Ordinance, and authorising Chairman to fix and finalise the date and venue for the EGM, (c) authorising Compensation Committee/Company Secretary to make any changes to ESOS required by SECP and submit application of approval of ESOS to SECP through LA, and

(d) authorising the Company Secretary to take all necessary and incidental actions in connection with the aforesaid business, including the convening and holding of the EGM and the circulation and publication of the EGM Notice. The Company Secretary shall convene the Board meeting through written notice for the aforesaid business and any other business, accompanied by a reasonably detailed agenda specifying the business to be conducted at the Board meeting, together with all relevant papers to be considered at that meeting. Such documents to be sent by courier or facsimile transmission to all Directors.

- **Parties Involved:** Company Secretary.
- **Time:** After finalizing the draft ESOS with SECP. Notice of the Board meeting to be circulated not less than 7 days before the date of the meeting or such greater period as may be provided in the Company's Articles of Association.
- **Step Number 11**
 - **Action:** Quorate Board meeting shall be conducted in accordance with the Company's Articles. CFO and the Company Secretary (who shall be secretary to the Board) shall attend the meeting, in compliance with paragraph 5.19.10 of Chapter 5 of PSX Rule Book. The Company Secretary shall ensure that the proceedings are appropriately minuted in a fair and accurate summary and the Chairman shall ensure that the minutes are appropriately recorded and will initial the minutes in compliance with paragraph 5.19.5(b) of Chapter 5 PSX Rule Book.
 - **Parties Involved:** Company Secretary, CFO and Directors.
- **Step Number 12**
 - **Action:** The Company Secretary shall circulate a copy of the minutes of the Board Meeting to all Directors pursuant to S. 173(1) of the Ordinance.
 - **Parties Involved:** Company Secretary.

- **Time:** Within 14 days of the date of the meeting.
- **Step Number 13**
 - **Action:** The Company Secretary shall determine the date of the EGM with the consent of the Chairman and by reference to the relevant period for Step No. 14 and the availability of the meeting venue.
 - **Parties Involved:** Company Secretary.
 - **Time:** The date of the EGM to be calculated in accordance with the following formula:
 EGM Date = 7 Business Days (Business Day is defined in CDC Regulations as a day on which CDC is open for business) after the date on which Company Secretary gives notice to CDC in terms of CDC Regulation 12.2.1 PLUS at least 21 calendar days but not more than 35 calendar days.
- **Step Number 14**
 - **Action:** The Company Secretary shall give notice to CDC in terms of Regulation 12.2.1 of the CDC Regulations.
 - **Parties Involved:** Company Secretary.
 - **Time:** Not later than 7 Business Days before dispatching or publishing the EGM Notice.
- **Step Number 15**
 - **Action:** The Company Secretary shall determine the books closure period for the purposes of the EGM.
 - **Parties Involved:** Company Secretary.
 - **Time:** Before dispatching or publishing the EGM Notice.
- **Step Number 16**
 - **Action:** The Company Secretary will dispatch EGM Notice to shareholders pursuant to S. 159(7) of Ordinance.
 - **Parties Involved:** Company Secretary.
 - **Time:** As soon as Steps 13, 14 and 15 are completed.
- **Step Number 17**
 - **Action:** The Company Secretary shall send EGM Notice along with the draft resolutions and accompanying Statement under S. 160(1)(b) to PSX pursuant to paragraph 5.6.4(b) of Chapter 5 of PSX Rule Book.
 - **Parties Involved:** Company Secretary.
 - **Time:** On the day before dispatch or publication of the EGM Notice (whichever is earlier).
- **Step Number 18**
 - **Action:** The EGM Notice shall be published in at least one issue each of a daily morning national newspaper in English language and a daily newspaper in Urdu language having circulation, pursuant to S. 159(7) of Ordinance. The EGM Notice shall be published at least once a week for 3 consecutive weeks. The advertisement shall comply with the provisions of paragraphs 2 and 3 of SECP Circular No. 1 of 2008 dated 7 January 2008, and SECP Circular Nos. 2 and 13 of 2002.
 - **Parties Involved:** Company Secretary.
 - **Time:** After completion of Step 17.
- **Step Number 19**
 - **Action:** The EGM Notice along with the statement under s. 160(1)(b) shall be emailed to SECP pursuant to Circular no. 10 of 2012.
 - **Parties Involved:** Company Secretary.
 - **Time:** On the same date on which the Company EGM Notice and accompanying statement are sent to the Company Shareholders.
- **Step Number 20**
 - **Action:** A copy of each newspaper in which the EGM Notice was published shall be sent to SECP through email, pursuant to Circular no. 10 of 2012.
 - **Parties Involved:** Company Secretary.
 - **Time:** Within 7 days of their publication.
- **Step Number 21**

- **Action:** The Company Secretary shall give notice to the PSX of the books closure period for the purposes of the EGM, pursuant to paragraph 5.5.14(a) of Chapter 5 of PSX Rule Book.
 - **Parties Involved:** Company Secretary.
 - **Time:** At least 14 days prior to the commencement of the books closure period.
- **Step Number 22**
 - **Action:** The Company Secretary shall give notice to CDC of the books closure period pursuant to Reg. 12.1.1 of the CDC Regulations.
 - **Parties Involved:** Company Secretary.
 - **Time:** At least 7 Business Days (see definition in Step 13 above) prior to books closure period commencement date.
 - **Step Number 23**
 - **Action:** The Company Secretary shall publish notice of the books closure period in a national morning newspaper having wide circulation pursuant to S. 151 of the Ordinance
 - **Parties Involved:** Company Secretary.
 - **Time:** At least 7 days prior to the books closure period commencement date.
 - **Step Number 24**
 - **Action:** The Company shall close its Register of Members and Register of Share Transfers.
 - **Parties Involved:** Company.
 - **Time:** During the books closure period.
 - **Step Number 25**
 - **Action:** Quorate EGM conducted in accordance with S. 160(2)(a) of Ordinance or such greater quorum as is provided in Company's Articles. Chairman of Board or one of the directors or shareholders shall preside as chairman pursuant to S. 160(3) of Ordinance. Company Secretary shall ensure that the proceedings are appropriately minuted in a fair and accurate summary and the Chairman shall ensure that the minutes are appropriately recorded and will initial the
- minutes in compliance with Ss. 173(1) and (2) of the Ordinance.
- **Parties Involved:** Company and shareholders.
- NB: A separate special resolution will need to be passed u/s 84 of the Ordinance, if the Exercise Price of the Option Shares will, or can, be less than the face value of the share.**
- **Step Number 26**
 - **Action:** File a copy of special resolutions passed at EGM with SECP, pursuant to paragraph 5.6.4(b) of Chapter 5 of PSX Rule Book.
 - **Parties Involved:** Company Secretary.
 - **Time:** Immediately after EGM.
 - **Step Number 27**
 - **Action:** Prepare application pack to be submitted to SECP.
 - **Parties Involved:** Company and LA.
 - **Time:** Immediately after EGM.
 - **Step Number 28**
 - **Action:** File a copy of special resolutions passed at EGM with SECP, pursuant to S. 172(1) of Ordinance.
 - **Parties Involved:** Company Secretary.
 - **Time:** Within 15 days of EGM.
 - **Step Number 29**
 - **Action:** Furnish CTC of minutes of EGM to PSX, pursuant to paragraph 5.7.2 of Chapter 5 PSX Rule Book.
 - **Parties Involved:** Company Secretary.
 - **Time:** Within 60 days of EGM.
 - **Step Number 30**
 - **Action:** Appoint ESOS Manager, stock broker for Cashless Exercise and prepare education pamphlets.
 - **Parties Involved:** Compensation Committee.
 - **Time:** After receiving formal approval of ESOS from SECP.