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Notification No. S.R.O. 66 (I)/2003

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NOTIFICATION

S.R.O. 66(I)/2003. – In exercise of the powers conferred by section 505 of the Companies Ordinance, 1984 (XLVII of 1984), read with clause (c) of section 43 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997), and the Finance Division's Notification No. S.R.O. 698(I)/86, dated the 2nd July, 1986, the Securities and Exchange Commission of Pakistan is pleased to direct that the following amendments shall be made in the Fourth Schedule to the Companies Ordinance, 1984, namely: -

In the aforesaid Schedule, in Part I,-

(1) in para 1, -

(a) after clause (i), the following new clause shall be inserted, namely:-

“(ia) “arm’s length price” means the price applied in a transaction between knowledgeable and willing parties, not being related parties, in uncontrolled conditions;”;

(b) after clause (xi), the following new clause shall be inserted, namely:-

“(xia) “related party”, in relation to a company, means an entity which has the ability to control the company or exercise significant influence over the company in making financial and operating decisions or vice versa and includes the following, namely:

(a) entities that directly or indirectly through one or more intermediaries control, or are controlled by, or are under common control with, the reporting company including holding companies, subsidiaries and fellow subsidiaries;

(b) associates, as defined in the International Accounting Standard 28, Accounting for Investments in Associates;

(c) individuals owning, directly or indirectly, an interest in the voting power of the reporting company that gives them significant influence over the company, and close members of the family of any such individual;

(d) key management personnel, that is, persons having authority and responsibility for planning, directing and controlling the activities of the reporting company including directors and officers of such company and close members of the families of such individuals;

(e) entities in which a substantial interest in the voting power is owned, directly or indirectly, by any person described in clause (c) or (d) or over which such person is able to exercise significant influence

including entities owned by directors or major shareholders of the reporting company and entities that have a key management personnel in common with the reporting company;

(f) entities in which one or more of the directors or members of the governing board are appointed by the reporting company or vice versa;

(g) where one or more of the directors or members of the governing board of the entity as well as the reporting company are appointed by the same person or persons;

(h) entities whose process of manufacture or business is wholly dependent on the use of know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the reporting company is the owner or in respect of which the company has exclusive rights or vice versa;

(i) where more than half of the raw materials and consumables required in the process of manufacture of an entity are supplied by the reporting company, or by persons specified by the company, or vice versa, and the prices and other conditions relating to the supply are influenced by the entity or the company; and

(j) where goods or articles manufactured or processed by an entity are sold or transferred to the reporting company or to persons specified by the company, or vice versa, and the prices and other conditions relating thereto are influenced by the entity or the company.

Explanation.-(1) In considering each possible related party relationship, attention should be directed to the substance of the relationship and not merely to the legal form.

(2) For the purposes of this clause,-

(i) "entity" means a partnership firm or a Hindu undivided family or an association of persons or a trust or a company; and

(ii) "close members of the family of an individual" means persons who may be expected to influence, or be influenced by, that individual in their dealings with the reporting company;"; and

(c) after clause (xii), the following new clause shall be inserted, namely:-

"(xiia) "transfer pricing" means the pricing of transactions between two or more related parties or between two or more segments of a company;"; and

(2) after para 11, the following new paras shall be inserted, namely:-

"12. The accounting policy in respect of related party transactions and transfer pricing shall be disclosed to identify that all transactions between the company and a related party or between two or more segments of the company are at arm's length prices determined in accordance with any of the following methods as approved by the Board of Directors, namely:-

(i) Comparable Uncontrolled Price Method;

(ii) Resale Price Method;

(iii) Cost Plus Method;

- (iv) Profit Split Method;
- (v) Transactional Net Margin Method; or
- (vi) Any other basis approved by the Commission, which has the effect of valuing such transaction at arm's length price.

13. In extremely rare circumstances, where the company decides to use a price other than the arm's length price, subject to the approval of the Board of Directors and the Audit Committee that, for reasons to be recorded in writing, it is in the interest of the company to do so, there shall be disclosed in the financial statements-

- (i) that transactions between the company and related parties and between segments of the company have been measured at arm's length prices except for the transaction in question;
- (ii) the transaction for which a price other than the arm's length price has been used, the reason therefor, the arm's length price that could have been applied and the price used; and
- (iii) the financial impact of the departure from the arm's length price on the company's net profit or loss, assets, liabilities, equity and cash flows for the relevant each period presented.”.

SECP/TP/DA/37/2002

(Mohammed Hayat Jasra)
Executive Director (Company Law)