

Securities and Exchange Commission (Rights Issue) Rules, 2006

1. **Short title** –These rules may be called the Securities and Exchange Commission (Rights Issue) Rules, 2006.
2. **Definitions.**- (1) In these rules, unless the context otherwise requires,-
 - (a) “bank-defaulter” means a person having an overdue or a classified loan as per the latest report issued by the Credit Information Bureau of Bangladesh Bank;
 - (b) “banker to the issue” means a bank so named in the rights share offer document to collect the rights share subscription;
 - (c) “chartered accountant” means a person who is a chartered accountant within the meaning of the Bangladesh Chartered Accountants Order, 1973 (P.O. No. 2 of 1973);
 - (d) “director” means a director of a company who is so named in the rights share offer document;
 - (e) “form” means the form annexed to these Rules;
 - (f) “Ordinance” means the Securities and Exchange Ordinance, 1969 (XVII of 1969);
 - (g) “rights share” means new shares offered to the existing shareholders of a public listed company in proportion to their existing holding out of total shares of the company;
 - (h) “rights share offer document” means a document offering for subscription of rights share by existing shareholders in terms of these Rules;
 - (i) “section” means a section of the Ordinance.

(2) Words and expressions used herein and not defined, but defined in the Securities and Exchange Ordinance, 1969 (XVII of 1969), the Securities and Exchange Commission Act, 1993 (XV of 1993), the Companies Act, 1994 (XVIII of 1994), and the Depository Act, 1999 (XI of 1999) shall have the same meanings respectively assigned to them in the said Acts and the Ordinance as well as Rules and Regulations issued thereunder.
3. **Conditions to be fulfilled prior to making rights issue.** – An issuer of a listed security may make rights issue by issuing rights share offer document subject to compliance with the following:
 - (a) such rights issue and price thereof have been approved by the shareholders in a general meeting;
 - (b) the proceed of previous public offering, or rights issue has been utilized fully;
 - (c) annual general meeting has been held regularly;
 - (d) the rights issue has been fully underwritten on a firm commitment basis by the underwriter;

- (e) the financial statements of the company is prepared as per International Accounting Standards (IAS) as applicable in Bangladesh, and audited as per International Standards of Auditing (ISA) as applicable in Bangladesh;
 - (f) the issuer or any of its directors is not a bank-defaulter; and
 - (g) the issuer has been credit rated by a credit rating company, if the offer is at a premium.
4. **Pricing and ratio of rights share.** –(1) The issuer of a listed security making rights issue shall determine the price of its rights share in consultation with the issue manager.
- (2) No issuer of a listed security shall price its rights share above par value; if it has not been in commercial operation for immediate past three years having a track record of profitability and net positive cash flows from its operating activities;
 - (3) The number of rights share proposed shall not exceed five for each existing share held in the company.
5. **Issue manager.** –(1) The issuer of a listed security making rights issue shall appoint an issue manager licensed under the Securities and Exchange Commission (Merchant Banker and Portfolio Manager) Rules, 1996, to ensure compliance with these rules.
- (2) The issue manager shall furnish a due diligence certificate as in Form-A which shall be included in the rights share offer document.
6. **Underwriter.** –(1) The issuer of a listed security making rights issue shall appoint one or more underwriters licensed under the Securities and Exchange Commission (Merchant Banker and Portfolio Manager) Rules, 1996 to fully underwrite the rights issue on a firm commitment basis.
- (2) The issuer shall call upon the underwriter within ten days of closing of the subscription lists for subscription of the under-subscribed shares, if any, by the underwriter, and the underwriter shall subscribe to such under-subscribed shares within fifteen days of calling thereof by the issuer.
 - (3) The underwriter shall furnish a due diligence certificate as in Form-B which shall be included in the rights share offer document.
7. **Filing of the application for rights share offer.** - (1) An application for issuing rights share along with offer document shall be furnished to the Commission for approval within fifteen days of approval of such issue by the shareholders of the company in a general meeting.
- (2) Such document shall be submitted to the Commission alongwith-
 - (a) the copies of underwriting agreement, issue management agreement, agreement with the banker to the issue;
 - (b) original auditors' report and certificate with the related financial statements;

- (c) relevant extract of the minutes of the general meeting;
 - (d) undertakings for the company itself and directors in prescribed CIB form; and
 - (e) a bank pay order or demand draft issued in favour of the Securities and Exchange Commission as payment of application fee for an amount of taka ten thousand only.
- (3) The Chief executive officers of the issuer and the issue manager, by whatever name called, shall jointly certify under their full signature and seal each page of the copy of documents submitted to the Commission under these rules.
- (4) The rights share offer document along with the audited financial statements must be submitted to the Commission within 120 days of the end of the period for which the said financial statements is prepared.
8. **Contents of the rights share offer documents.-** (1) Rights share offer document shall include, among others, the following information, namely :-
- (a) date of the rights share offer document;
 - (b) amount of rights shares, divided into number of shares, par value and issue price of each share, and number of right share offered for each existing share;
 - (c) highlight of the rights offer, risk factors, and management plans for reduction of such risks;
 - (d) date and time of opening and closing of subscription;
 - (e) purposes of raising fund through rights share, specifying clearly the heads and amount of the fund utilisation, and identifying various proposed projects with heads and amount of expenditure for each projects, and also highlights of such projects;
 - (f) name of the products manufactured or to be manufactured or services rendered or to be rendered by the issuer together with capacity or proposed capacity of the existing and proposed projects vis-a-vis capacity utilised by the existing project during the last three years or such shorter period during which the issuer was in commercial operation;
 - (g) if the issue price of rights share is higher than the par value thereof, justification of the premium should be stated with reference to-
 - (i) net asset value per share at historical or current costs;
 - (ii) earning-based-value per share calculated on the basis of weighted average of net profit after tax for immediately preceding five years or such shorter period during which the issuer was in commercial operation;

- (iii) average market price per share for the last six months immediately prior to the offer for rights issue; and
- (iv) projected earnings per share/book value for the next three accounting year as per the assessment of issuer and issue manager;
- (h) cash flows statement, profit and loss account, balance sheet and notes to the accounts of the issuer made upto a date not earlier than 180 days from the rights share offer document date, together with certificate from the auditors as in Form-C;
- (i) summarised cash-flows statement, profit and loss account and balance sheet, and dividend declared and paid for each of the five years immediately preceding the issue of rights share offer document or for such shorter period during which the issuer was in commercial operation, together with a certificate from the auditors as in Form-C;
- (j) length of time during which the issuer has carried on business;
- (k) implementation schedule for completion of each segment of the project alongwith the proposed dates of trial and commercial operation of the proposed project;
- (l) quantity of shares held by each director and persons who hold 5% or more of the paid-up share capital of the issuer on the date of the rights share offer document;
- (m) name, address, description and occupation of directors; managing director, managers and company secretary of the company;
- (n) name of the public listed companies under common management, if any;
- (o) name and address of the underwriter alongwith the number of shares underwritten by each underwriter, and also the name and address of issue manager, auditors, legal adviser and banker to the rights issue;
- (p) particulars alongwith the terms and conditions of the material contracts including vendors' agreement, underwriting agreement, issue management agreement, agreement with the banker to the issue and contract for acquisition of property, plant and equipment;
- (q) number of rights shares that the directors are going to subscribe, and in case they propose to make renunciation, the reasons and extent of such renunciation;
- (r) statement of actual utilisation of fund raised by public offering of shares or rights shares, if any, prior to the proposed rights issue vis-a-vis plan therefor;
- (s) application form for depositing the subscription money with the bankers to the issue for the rights share, with the provision for renunciation of the rights offer;

- (t) declaration about the responsibility of the issue manager, the underwriter, the auditors and the directors in Forms-A, B, C, and D respectively;
- (u) a statement that a lock-in on the rights shares of the directors (including their renounced shares) for a period of three years from the date of closure of the rights share subscription shall be operative;
- (v) **a declaration that the rights shares to be issued in dematerialized form and that the subscribing shareholders have to apply with respective depository accounts; and**
- (w) **summary of rating statement by a credit rating company, if the offer is at a premium.**

9. **Public announcement for rights issue.** – (1) The issuer of a listed security making offer for rights issue shall:

- (a) announce two separate date for record date, one for shareholders decision regarding the proposed rights issue, and the other for determination of entitlement of rights issue after the Commission accords approval;
- (b) for the purpose of determination of entitlement of rights issue under these Rules, the issuer shall, within three working days from the date the Commission accords approval to the issuer under these Rules, announce the record date;
- (c) disseminate the receipt of the Commission's approval along with purpose of the rights issue, amount of issue, price of rights share as a price sensitive information, as prescribed by the Commission mentioning the record date for the determination of entitlement of rights share, and subscription opening and closing dates will be disclosed within three working days;
- (d) commence record date not earlier than fourteen working days and not later than twenty one working days from the date of approval by the Commission;
- (e) deliver offer document approved by the Commission to the shareholders entitled to have rights shares, stock exchange(s) and the Commission within 10 working days from the record date as mentioned in (d) above.
- (2) Once approval is obtained, no rights offer can be withdrawn or cancelled or postponed or varied by the issuer without prior written consent from the Commission.

10. **Approval and rejection.** – (1) On receipt of an application for approval to the rights share offering from an issuer, the Securities and Exchange Commission shall examine the said application.

- (2) In case the said application is incomplete, the Commission shall inform the applicant in writing of the deficiencies generally within twenty eight days of

receipt of the said application, and the issuer shall correct the deficiencies within fifteen days of communication thereof.

- (3) On receipt of the complete application and satisfaction of the Commission, the Securities and Exchange Commission shall accord its approval, subject to such conditions as the Commission may deem fit.
 - (4) If the offer is not approved, the Commission shall issue a rejection order, stating the reasons for such rejection, within sixty days of receipt of the complete application.
11. **Approval fee on rights share.** –The issuer of a listed security shall deposit approval fee with the Commission for the rights issue at 0.15% of the total offered amount of rights issue, including premium, if any, by a bank pay order or demand draft issued in favor of the Securities and Exchange Commission within seven working days from the date of according said approval.
12. **Subscription** –(1) Subscription shall be received through the banker to the issue during the subscription period of not less than fifteen days and not more than thirty days.
 - (2) Subscription opening date shall commence after fifteen days from the record date as mentioned in rule 9 (d).
13. **Information on raising of rights issue fund.** –The issuer of rights share shall furnish to the Commission;-
 - (a) statement of the subscription received against the offer for rights issue within ten days of the closing of the subscription lists; and
 - (b) statement of the subscription received from the underwriter against the under subscribed shares within seven days of the expiry of the subscription period allowed to the underwriter under rule 6.
14. **Lock-in on rights share.** – The rights share of directors and other shareholders holding 5% or more shares shall be subject to lock-in for a period of three years from the date of closure of the rights share subscription. In the event of renunciation of rights share by aforesaid persons, the renounced shares shall also be subject to lock-in for the same period. The issuer shall ensure compliance of this rules.
15. **Contravention.**– Contravention of any of the provisions of these Rules will attract relevant provisions of the Securities and Exchange Ordinance, 1969.
16. **Repeal and Savings.**—(1) The Rights Issue Rules, 1998 is hereby repealed.
 - (2) Notwithstanding the repeal of the said Right Issue Rules, 1998 any clearance given, document or agreement made, fee received or paid, resolution passed, direction given, proceeding taken, instrument executed or issued or things done under or in pursuance of the said Rules shall, if in force at the commencement of these Rules, continue to be in force and shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of these Rules.

FORM-A
(see rule 5)

**Declaration (due diligence certificate) about responsibility of the issue manager
in respect of the rights share offer document**

This rights share offer document has been reviewed by us; and we confirm after due examination that the rights share offer document constitutes full and fair disclosures about the rights issue and issuer, and complies with the requirements of the Securities and Exchange Commission (Rights Issue) Rules, 2006; and that the issue price is justified under the provisions of the Securities and Exchange Commission (Rights Issue) Rules, 2006.

Place

Dated

.....

Manager)

For

(Name of the Issue

(Signature)

Managing Director

FORM-B

(See rule 6)

**Declaration (due diligence certificate) about responsibility of the underwriter(s)
in respect of the rights share offer document**

This rights share offer document has been reviewed by us; and we confirm after due examination that the issue price is justified under the provisions of the Securities and Exchange Commission (Rights Issue) Rules, 2006, and also that we shall subscribe for or procure subscription for any under-subscribed rights shares within fifteen days of calling thereof by the issuer. The issuer shall call upon us for such subscription within ten days of closure of the subscription lists for the rights issue.

Place

Dated

Underwriter)

For

(Name of the

(Signature)

Managing Director

FORM-C
[See rule 8(1)(h) & 8(1)(i)]
Auditors' report to the shareholders

We have audited the accompanying financial statements for the period from to of in accordance with the International Standards of Auditing as applicable in Bangladesh; and we state that we have obtained all the information and explanations which we have required, and after due verification thereof, we report that, in our opinion:

- (a) These financial statements have been drawn up in accordance with the requirements of the Securities and Exchange Rules, 1987, as amended the Companies Act, 1994 and other relevant laws where applicable; and the International Accounting Standards as applicable in Bangladesh;
- (b) These financial Statements which are in agreement with the Books of Account of the Company give a true and fair view of the state of its affairs as at and of the result of its operations and cash flows for the period/year then ended;
- (c) Proper Books of Account have been kept by the Company as required by the relevant laws; and
- (d) The expenditure incurred was for the purposes of the Company's business.

We also certify that the above company has declared the following dividend for each of the following five years immediately preceding the issue of rights share offer document under the Securities and Exchange Commission (Rights Issue) Rules, 2006, and that the company has duly paid off the following amounts of the declared dividend mentioned against respective year-

Financial Year	Date of Dividend Declaration	Declared Dividend
		Rate (%) Total Amount (TK.) Total Paid (Tk.)

Place

Date

For
(Name of the firm)

(Signature with name of the Partners)
Chartered Accountants

FORM-D

[see rule 8(1)(t)]

**Due diligence certificate by the directors about their personal responsibility
in respect of the rights share offer document**

This rights share offer document has been prepared, seen, reviewed and approved by us; and we collectively and individually accept full responsibility for the accuracy of the information given in the rights share offer document; relevant documents and financial statements submitted to the Commission and others concerned under the Securities and Exchange Commission (Rights Issue) Rules, 2006. We confirm after making all reasonable enquiries that all conditions concerning this rights issue and rights share offer document have been met. We further confirm that we have not concealed any information or statement which might have any bearing on the information already made. In case of any default or failure on our part, civil, criminal or administrative action may be taken against us.

Sd/- Chairman	Sd/- Managing Director	Sd/- Director	Sd/- Director
Sd/- Director	Sd/- Director	Sd/- Director	Sd/- Director

Place

Dated

(Name of the Issuer Company)