IN THE NAME OF ALLAH ALMIGHTY, THE MOST MERCIFUL, MOST BENEFICENT

KHILJI & CO.
Chartered Accountants

DETAILED PROFESSIONAL COMMENTARY ON SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN (SEARCH AND SEIZURE) RULES, 2019

Plot 2, Mezzanine Floor, Khumrail Plaza, I&T Center Street 22, Sector G-8/4, Islamabad.
Tel: +92 51 2253303-6, Fax +92 51 2253307, Email: sharif.khilji@khilji.net.pk, Website:www.khilji.net.pk

DETAILED PROFESSIONAL COMMENTARY
AMENDMENTS

Non-Banking Finance Companies and Notified Entities Regulations, 2008

S.R.O. 639 (I)/2019 DATED JUNE 20, 2019

INTRODUCTION

SECP vide notification # S.R.O.713(I)/2019 dated the 1st July, 2019 has made rules to be called the Securities and Exchange Commission of Pakistan (Search and Seizure) Rules, 2019 and are effective with immediate effect.

Securities and Exchange Commission of Pakistan (Search and Seizure) Rules, 2019 are made, in exercise of the powers conferred by section 39 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997) read with sub-section (1) of section 31 and clause (b) of section 43 thereof, the Securities and Exchange Commission of Pakistan with the approval of the Federal Government.

.

Khilji & Co (Chartered Accountants) is pleased to present Firm's Professional Commentary. The only purpose of this document is to provide updated information to our clients about recent subject SRO. The information provided in this document should only be used in conjunction with professional opinion from tax/ legal advisor and checked for updated position of law. This document as a whole or its any part should not be reproduced in any form without prior written approval from Khilji & Co.

COMMENTARY

CHAPTER – I: DEFINITIONS

This chapter contain definitions and reproduced in detailed commentary if deemed necessary.

CHAPTER – II: PROCEDURE RELATING TO SEARCH AND SEIZURE

Investigating Officer shall adopt following procedures during search and seizure activity

- **PROCEDURE OF SEARCH AND SEIZURE**

- investigating officer shall prepare an inventory of all the documents, electronic evidence, electronic devices, objects, articles, material or things seized in the course of search and clearly note the places in which they are found.

  "investigating officer" means any employee or any other person for the purpose of investigation authorized by the Commission under the Act or any administered legislation and also includes investigation team of the said employees or any other persons.
- The investigating officer shall allow any occupant of the place to be present during search under such restriction as deemed appropriate for conducting the search.
- The investigating officer shall prepare seizure memo, in a format given under this rules, at the spot and must carry with him all necessary tools or things required for preparing seizure memo or may prepare handwritten seizure memo.
- The investigating officer shall maintain a case diary of proceedings, with details of day to day proceedings in the investigation and the investigating officer shall record concisely and clearly all steps taken by the team during the course of investigation. It shall also include description of all documents seized and all statements recorded.

  Said diary shall not be part of the prosecution record and shall be used for assistance in the investigation and perusal of the Commission and the court and no person shall be entitled to call for such diaries, nor shall he or they be entitled to inspect such diaries.
- The investigating officer shall meet all requirements of the Act (Securities and Exchange Commission of Pakistan Act 1997) and any administered legislation under which investigation is authorized.

- **WITNESS**
  - Search of any place or building shall be conducted in presence of two witnesses who may be inhabitants, officials, officers, servants, employees or keeper of the locality, office, building or place including any regulated person, in the absences of the said persons may associate other officers, officials or employees of the Commission as witness, after due briefing and recording of the same in Diary.

- **SEARCH OF PLACES AND BUILDINGS BY FORCE**

- investigating officer shall take assistance of the local Police in prior to search of any building, place, vessel and vehicle and other enclosed places.
- Investigation officer shall record his entry in "daily diary or Roznamcha" of the relevant police station.
- investigating officer may, at any time when the circumstances so warrant, call Police force or any other administrative agency for assistance in accordance with sub-section (4) of section 29 of the Act:

  Provided that while asking for assistance from the concerned police officer under these rules, it shall not always be necessary, if circumstances so warrant, to give exact location of the place or building to be searched for operational reasons.
- Where the investigating officer has apprehension that any person or occupants of any building, place, vessel and vehicle to be searched may create hindrance, resist search or such document or thing is not known to be in the possession of any person or where general search is required for the purposes of any proceedings, under these rules or any person will not produce any document or thing as required by the investigating officer in any proceedings or investigation under these rules, a search-warrants from the concerned Magistrate may be obtained:

  Provided that the investigating officer after obtaining warrant under sub-rule (4) may conduct search of such person and enter any building, place, vessel or vehicle and seize any property, material, document, electronic evidence, electronic device or thing required or associated with the commission of any offence under the Act or administered legislation.
- Subject to above, the investigating officer may break open any inner or other door or window of any building, place, vessel or vehicle etc. and enter the same in order to seize any movable property if the investigating officer has reasonable grounds to believe that such building contains movable property liable to seizure and the investigating officer has notified his authority and purpose.
- If any person fails to comply / cooperate with Investigation Officer and have things under locked with key himself, investigating officer may take action including the breaking to open.
- The investigating officer may require any person who is the owner or has the immediate possession or control of, not to remove any thing from premises/item subject to search.
- All necessary precautions shall be taken by the investigating officer not to damage or destroy anything during search and limit the use of force.

- **SEARCH OF PERSONS**
  - Any person who has got out of or is about to get into or is in any house, building, office, place, vessel or vehicle etc. authorized to be searched if the investigating officer has reason to suspect that such person has secreted about his person any such books of account or other documents, may be searched and if such person is a female, the search shall be made by another female officer so authorized with strict regard to decency.

- **SEARCH OF ELECTRONIC DEVICES. –**
  - The investigating officer shall have the power of inspection of the documents or electronic devices found in any place, house, building, office, vessel and seize any document, books of account or other documents, found as a result of such search and get the signature of such persons on the seizure memo and take photographs etc.

- **SEIZURE MEMO**
  - An investigating officer shall prepare a seizure memo, in presence of the person (if available) from whom or whose premises, vessel or vehicle etc. the documents, electronic evidence or electronic devices were seized.
  - In case where the electronic information stored in electronic device is to be searched and seized, the information to be searched must be identified wherever possible like in the form printed or electronic copies, screen shots etc. and investigation officer may seize the electronic devises.

- **POWER TO PLACE IDENTIFICATION MARK**
  - The investigating officer shall have the power to place mark of identification on any books of account or other documents and electronic devises.

- **POWER TO MAKE COPY**
  - The investigating officer shall have the power to make or cause to be made extracts or copy of documents, electronic evidence or any books of account.

CHAPTER III: RIGHTS AND OBLIGATIONS OF INVESTIGATING OFFICER AND PERSONS BEING SEARCHED

Rights and obligation of the person being searched are as follows: -

- **RIGHTS OF PERSONS UNDER SEARCH AND PERSONS IN CHARGE**
  - The occupant of the house, building, office, place, vessel or vehicle searched, including the person in charge of such vessel, vehicle etc. shall have the right-

    (a) to see the relevant authorization of investigating officer;

    (c) to be present during the search and seizure;

    (d) to have a copy of any statement recorded during search and seizure or may withheld statements if believes that investigation may jeopardized.

- **OBLIGATIONS OF PERSONS UNDER SEARCH AND PERSONS IN CHARGE**
  - Investigating office may require any person in charge of or who is present in any house, building, office, place authorized to be searched: -

    (a). To identify any person as may be required by the investigating officer.

    (b). To locate and identify such vessel or vehicle etc.

    (c). allow him free ingress thereto and afford all reasonable facilities for a search.

    (d). to disclose the password and such other information as may be asked for by the investigating officer.

    (e). To provide to the investigating officer the necessary facility to inspect such books of account or other documents.

    (f). shall identify such receptacles in which assets or books of account, electronic devices and documents are kept and to hand over keys of such receptacles to the investigating officer

    (g). to assist investigation officer in execution of officer.

- **OBLIGATIONS OF INVESTIGATING OFFICER**
  - The investigating officer before conducting the search shall: –

    (a). identify himself either by name or by official identification documents;

(b). show order of the Commission under rule 3 to the person who occupies the premises or to any person in charge of building, place, vessel or vehicle etc. authorized to be searched and on request provide copy of the order, made under rule 3, authorizing the search.

CHAPTER IV – MISCELLANEOUS

- **SAFE CUSTODY OF SEIZED DOCUMENTS, ELECTRONIC EVIDENCE OR ELECTRONIC DEVICES**
  - The documents, electronic evidences or electronic devices seized by the investigating officer shall be transported in a safe manner to the place of custody.
  - The investigating officer shall keep in his custody any documents, books of accounts, registers, electronic devices or other documents and records seized under these rules for such period not later than the conclusion of the investigation, as provided by the law.
  - The investigating officer shall ensure that records in physical form are not altered, damaged, mutilated and the electronic evidences in electronic form are not altered or erased.
  - The investigating officer shall ensure that the physical documents and electronic devices on which electronic records are maintained and stored are kept in suitable physical and environmental conditions.
  - The investigating officer shall use antistatic evidence bags or well-padded containers in order to seize and/or transport fragile or sensitive electronic evidences or electronic devices.

- **RETURN OF DOCUMENTS**
  - The investigating officer shall return the documents or electronic devices seized under these rules to the company not later than the thirtieth day (with identification mark) after such seizure unless are necessary for the investigation.

- **PROTECTION OF PERSONAL INFORMATION**
  - The personal information contained in any document seized and kept in accordance with these rules shall not be divulged to any third person, except for the compliance of any law for the time being in force, without the consent of the person to whom the information relates.

- **FORENSIC OF THE SEIZED DOCUMENTS**
  - The investigating officer may, subject to approval of the Commission, submit any documents seized or any electronic evidence collected under these rules to such forensic expert of any federal or provincial investigation agency, bureau or authority as deemed appropriate by the investigating officer for examination or analysis and report during the course of investigation under the Act.

- **RETENTION OF FORENSIC COPY**
  - Notwithstanding anything contained in rule 16 –

    (a) forensic copy of the data or mirror image of electronic device and any copy thereof may be retained, on being satisfied that such data or image has evidentiary value; and

    (b) any copy made or generated from any other documents or electronic devices seized in accordance with these rules may also be retained.

- **PENALTY**
  - If any person contravenes or fails to comply with any provision of these rules, he shall be punished in accordance with section 40A of the Act.

LINK OF DOCUMENT

https://khilji.net.pk/wp-content/uploads/2019/07/Search-and-Seizure-Rules-2019.pdf

----------End of Document----------

Disclaimer: It is extremely imperative and essential to mention here that the only purpose of this document is to provide updated information to our clients. The information provided in this document should only be used in conjunction with professional opinion from tax/ legal advisor and checked for updated position of law. This document as a whole or its any part should not be reproduced in any form without prior written approval from Khilji & Co. Our comments above are based on the relevant laws, regulations and rulings in effect and available in the public domain as of the date of our note. The authorities can change their view and position on certain issues, whose impact may be retroactive and there is no guarantee that the authorities will, or are under any obligation to accept our views. We undertake no obligation to advise you of any subsequent changes or developments that may affect our comments or any matters set forth herein. Any changes by the authorities subsequent to the date of this email may affect the validity of the comments.