

## PUBLIC COMMENTS ON THE DRAFT BSEC (Corporate Restructuring) Rules, 2026

### OVERVIEW

The comments below are offered in that constructive spirit to strengthen the framework. They are organized in three parts: a priority-highlights matrix for rapid review, followed by clause-by-clause commentary that, for each point, states the issue, sets out suggested drafting, and gives the rationale with reference to comparable regimes; and finally, recommended new provisions addressing critical gaps that need to be incorporated.

### A. PRIORITY HIGHLIGHTS

| Priority | Issue   | Provision                        | Impact  |
|----------|---|----------------------------------|---|
| CRITICAL | Coordination between the Commission and the Court                           | Rule 1(3)                        | procedural uncertainty across bodies                                      |
| CRITICAL | Dissenting-shareholder exit mechanism                                       | New Rule                         | Structural gap; weakens minority protection                               |
| CRITICAL | Residual-minority acquisition after overwhelming approval                   | New Rule                         | Risk of stranded minority shareholders after sanction                     |
| CRITICAL | Public-shareholder approval threshold                                       | Schedule A, (20)                 | May be either impractical to achieve or vulnerable to low-turnout capture |
| CRITICAL | Consequence for delay beyond observation timeline                           | Rule 6(3)                        | Deal uncertainty; may materially delay time-sensitive schemes             |
| HIGH     | Key operative terms remain undefined  | Rule 2                           | Drafting ambiguity and enforceability risk                                |
| HIGH     | Coordination with the BSEC substantial share acquisition/takeover framework | New Rule                         | Regulatory overlap; uncertainty around open-offer timing and exemptions   |
| HIGH     | No express requirement for separate class meetings                          | Rule 3(3)                        | Risk of prejudice to affected classes                                     |
| HIGH     | Discount-rate provision   | Schedule B, (5)(i)               | Valuation distortion and inconsistent application risk                    |
| HIGH     | Backdoor listing and reverse takeover                                       | Rule 4(1)(zi) and 4(4)(a)        | May block legitimate strategic consolidation                              |
| HIGH     | Independent adviser to audit committee                                      | Schedule A, (27)                 | Fairness assessment may lack independent transaction analysis             |
| HIGH     | Compliance burden and applicability to non-listed parties                   | Rule 3(2)                        | Ambiguous compliance for non-listed parties                               |
| HIGH     | Market-price reference date   | Rule 5(7)(a), and 5(4)(d)        | Price inconsistency and manipulation scope                                |
| MEDIUM   | Valuation methodology flexibility   | Schedule B, (1) and (2)          | May encourage window-dressing valuations                                  |
| MEDIUM   | Tax-neutrality coordination   | Rule 4(1)(t), 4(2)(g) / New Rule | Structural disincentive to genuine restructuring                          |
| MEDIUM   | Standstill covenants before effectiveness                                   | Rule 4(1)(l)                     | Deal-to-closing value-leakage risk  |
| MEDIUM   | Proportionate disclosure for smaller non-listed transferors                 | Schedule A, (29)                 | May deter legitimate SME-to-listed-company consolidation.                 |
| MEDIUM   | Revenue-growth cap and exceptions   | Schedule B, (5)(ii)              | Too rigid for legitimate growth companies                                 |
| LOW      | Industry classification reference   | Schedule B, (4)                  | Outdated or incomplete classification reference                           |

## B. CLAUSE-BY-CLAUSE COMMENTARY

### 1. Rule 1(3) | Coordination between the Commission and the Court | CRITICAL

**Issue.** Rule 1(3) preserves the jurisdiction of the Court under the Companies Act, 1994 and other applicable laws. However, the draft Rules do not expressly state how the Commission's observations will interact with the Court's independent sanction jurisdiction if the Court proposes to sanction a scheme on terms materially inconsistent with the Commission's observations. This may create procedural uncertainty across the Commission, stock exchange(s), and Court approval pathway.

**Recommendation.** *Insert the following clarification:*

*"Where the Commission has issued observations under Rule 6 and the Court proposes to sanction the scheme on terms materially inconsistent with such observations, the company shall promptly notify the Commission. The Commission may, within 15 days of such notification, move the Court for directions on the specific point of divergence. The scheme shall not take effect until such divergence is resolved by the Court or otherwise addressed to the satisfaction of the Commission, as applicable."*

**Rationale.** This would preserve the Court's jurisdiction while creating a clear coordination mechanism between regulatory observations and judicial sanction, thereby reducing uncertainty in the approval process. Comparable scheme frameworks, such as section 230 of the Indian Companies Act, 2013, use a tribunal-supervised process with regulatory input; the proposed rule should similarly clarify how BSEC observations interact with Court sanction.

### 2. Rule 2(1) | Key operative terms remain undefined | HIGH

**Issue.** Several operative terms used in the draft Rules are not expressly defined, including "control", "effective date", "appointed date", "public shareholder", "minority shareholder", "promoter", "sponsor", and "person acting in concert". These terms are central to voting rights, minority protection, takeover-rule interaction, valuation timing, and the date from which assets, liabilities and obligations are transferred.

**Recommendation.** *Add the following definitions:*

- *"Control" shall have the meaning assigned to it under the Bangladesh Securities and Exchange Commission (Substantial Share Acquisition, Takeover and Control) Rules, 2018.*
- *"Effective Date" means the date specified in the scheme or in the Court order on which the scheme becomes operative after satisfaction of all conditions precedent, including regulatory approvals.*
- *"Appointed Date" means the date specified in the scheme from which the assets, liabilities, rights and obligations of the transferor company are deemed to be transferred to, or vested in, the transferee company for accounting, tax or other specified purposes.*
- *"Public Shareholder" means a shareholder other than sponsors, directors, promoters, the counterparty to the scheme, persons acting in concert with them, and their respective affiliates.*
- *"Person Acting in Concert" shall have the meaning assigned under the Bangladesh Securities and Exchange Commission (Substantial Share Acquisition, Takeover and Control) Rules, 2018.*

**Rationale.** Definitional precision is necessary for consistent application of the Rules, particularly for minority-shareholder voting, takeover-rule coordination, valuation timing and the legal effectiveness of the scheme.

### 3. Rule 3(2) | Compliance burden and applicability to non-listed parties | HIGH

**Issue.** The draft applies to restructuring involving listed companies with listed or non-listed companies. However, certain provisions assume listed-company governance and compliance architecture, such as independent directors, audit committee review, PSI disclosure, listing regulations and stock-exchange compliance. The draft does not clearly state which of these requirements apply to a non-listed transferor, transferee, acquiror or acquiree, and whether such compliance is required before the scheme, during the approval process, or as a condition of effectiveness.

**Recommendation.** *Insert the following clarification:*

*“Where any party to the scheme is a non-listed company, such non-listed company shall comply with the disclosure, due diligence, valuation and corporate-governance requirements under these Rules to the extent applicable for the purpose of the scheme. Any requirement that is structurally applicable only to a listed company shall apply to the listed party, while material deviations or inapplicability in respect of the non-listed party shall be disclosed in the scheme with reasons.”*

**Rationale.** This preserves regulatory rigor while making the framework operable for legitimate listed-to-non-listed restructuring transactions.

### 4. Rule 3(3) | Separate class meetings for differently affected creditors or members | HIGH

**Issue.** Rule 3(3) refers to approval by shareholders’ and/or creditors’ meeting, as applicable. However, it does not expressly require separate meetings for materially different classes of creditors or members where their rights are affected differently. A single combined vote may prejudice a class whose rights are materially altered in a different manner from other creditors or members.

**Recommendation.** *Insert the following provision:*

*“Where the scheme affects different classes of creditors or members differently, separate meetings shall be convened for each class materially and differently affected. The scheme shall be treated as approved by creditors or members, as applicable, only if approved by each such affected class in accordance with the Companies Act, 1994 and these Rules.”*

**Rationale.** Class-based approval is necessary to ensure that one class of creditors or members is not bound by the vote of another class whose economic rights and incentives are materially different. Comparable scheme regimes, including section 230 of the Indian Companies Act, 2013 and sections 895–899 of the UK Companies Act 2006 framework, proceed on the principle that differently affected classes should be separately considered.

## 5. Rule 4(1)(I) | Standstill covenants before effectiveness | MEDIUM

**Issue.** Rule 4(1)(I) requires disclosure of conditions regarding continuation of business by the transferor between the effective date and completion of the scheme. However, the more sensitive period is often from board approval or public announcement until the effective date. During this period, extraordinary dividends, material debt, new equity issuance, related-party transactions or major capital expenditure may alter the economic basis on which valuation and swap ratio were approved.

**Recommendation.** Insert the following provision:

*“The scheme shall contain standstill covenants restricting the parties, from the date of board approval or public announcement of the scheme until the effective date, from declaring extraordinary dividends, issuing equity or equity-linked securities, incurring material indebtedness, entering into related-party transactions outside the ordinary course of business, disposing of material assets, or altering capital structure, except with prior approval of the Commission or as expressly disclosed in the scheme.”*

**Rationale.** Standstill covenants reduce value-leakage risk and preserve the commercial basis on which shareholders and creditors evaluate the scheme. Comparable takeover practice, including UK Takeover Code Rule 21, restricts frustrating actions by the offeree board during an offer period; the draft Rules should similarly restrict value-leakage actions between board approval/announcement and effectiveness.

## 6. Rule 4(1)(zj) and Rule 4(4)(a) | Backdoor listing and reverse takeover | HIGH

**Issue.** Rule 4(1)(zj) requires disclosure as to whether the scheme results in an indirect listing, backdoor listing or similar outcome. Rule 4(4)(a) separately prohibits schemes adopted, initiated or executed for facilitating a backdoor listing or reverse takeover, meaning the listing of a non-listed company through a scheme of arrangement. The policy objective is appropriate. However, an absolute prohibition may also capture genuine strategic combinations where a listed company merges with or acquires a larger non-listed operating company for bona fide commercial reasons, with adequate disclosure, valuation, minority approval and regulatory scrutiny.

**Recommendation.** Replace Rule 4(4)(a) with the following:

*“No scheme shall be adopted, initiated or executed where its primary purpose is to facilitate a backdoor listing, reverse takeover or circumvention of listing-eligibility requirements. Where the Commission forms a prima facie view that the scheme may result in an indirect listing, backdoor listing or reverse takeover, the applicant company shall be given an opportunity to demonstrate genuine commercial rationale, business synergy, fair valuation, adequate minority protection, and substantive compliance with applicable listing requirements.”*

**Additional recommendation.** Add a substantiality test:

*“For this purpose, the Commission may consider whether the assets, revenue, profits, consideration or market value of the non-listed company or undertaking exceed 100% of the corresponding metric of the listed company, or such other threshold as the Commission may prescribe.”*

**Rationale.** This targets abusive shell-listing transactions while preserving legitimate consolidation, strategic restructuring and business combination transactions that satisfy disclosure, valuation and minority-protection safeguards. Comparable listing regimes, including the UK Listing Rules under UKLR 7.5 and UKLR 7 Annex 1, regulate reverse takeovers through announcement, circular, shareholder approval and class-test analysis, rather than a blanket prohibition in all cases. The 100% substantiality threshold may be considered by analogy to UK reverse takeover/class-test logic, where a transaction may be treated as a reverse takeover if a class-test percentage ratio is 100% or more or the transaction causes a fundamental change.

## 7. Rule 5(7)(a), read with Rule 5(4)(d) | Market-price reference date | HIGH

**Issue.** Rule 5(4)(d) states that valuation must not be determined solely on the basis of market price. Rule 5(7)(a) requires consideration of the prevailing market price on the valuation date. However, the draft does not define the valuation date or prescribe whether the relevant market price should be based on the announcement date, board approval date, record date, Court sanction date or a preceding average. This may create inconsistency and scope for price manipulation around the valuation date.

**Recommendation.** Insert the following clarification:

*“For the purpose of Rule 5(7)(a), market price shall mean the volume-weighted average price of the listed company’s shares over the 26 weeks preceding the earlier of: (i) the date on which the scheme is first publicly announced; and (ii) the date of the board resolution approving the draft scheme. Where trading history is insufficient or abnormal price movement is identified, the valuer shall disclose the limitation and apply appropriate adjustment with reasons.”*

**Rationale.** A defined reference period will improve consistency, reduce manipulation risk, and provide valuers, shareholders and the Court with a clearer basis for assessing fairness.

## 8. Rule 6(3) | Consequence for delay beyond observation timeline | CRITICAL

**Issue.** Rule 6(3) requires the Commission to issue observations within 45 working days from receipt of the scheme. However, the draft does not state the consequence if observations are not issued within that period, nor does it clearly address how additional information requests affect the timeline. Without a clear consequence, financing commitments, shareholder approvals and transaction pricing may remain uncertain for an indefinite period.

**Recommendation.** Insert Rule 6(3A):

*“If the Commission does not issue observations within 45 working days of receipt of a complete application, the company may proceed to convene the shareholders’ and/or creditors’ meeting, as applicable, subject to compliance with the Companies Act, 1994 and these Rules. Where the Commission requires additional information, clarification or documents within the first 15 working days, the 45-working-day period shall run from the date on which such requested information is duly submitted. The Commission may, before expiry of the relevant period, extend the timeline by a further 15 working days by recorded reasons communicated to the company.”*

**Rationale.** This preserves the Commission's review power while giving the regulatory timeline practical effect and reducing avoidable transaction uncertainty. Comparable Securities and Exchange Board of India (SEBI) scheme practice uses an observation/no-objection framework for listed-entity schemes before filing with the court/tribunal; Bangladesh may adapt this by giving the 45-working-day timeline a clear consequence.

## 9. Schedule A, (20) | Public-shareholder approval threshold | **CRITICAL**

**Issue.** Schedule A, paragraph 20 requires evidence that the scheme has been approved by at least 75% of the general shareholders present and voting, excluding sponsors, directors and shareholders holding 5% or more shares. The policy objective of minority protection is sound. However, the proposed formulation may create practical and legal uncertainty for five reasons: first, no quorum is prescribed for the excluded-shareholder vote; second, regulated institutional investors holding 5% or more, such as Investment Corporation of Bangladesh (ICB), mutual funds, insurers or foreign institutions, may be excluded despite often being important minority-protection voices; third, low retail turnout may make the vote either very difficult to pass or vulnerable to capture by a small number of participants; fourth, no remote e-voting or poll mechanism is prescribed; and fifth, the additional approval test should be expressly harmonized with the Companies Act, 1994 scheme-approval architecture.

**Recommendation.** Replace paragraph 20 with the following:

*"Certified copies of the minutes of the general meetings of the Transferee and Transferor Company(ies), together with the report of an independent scrutinizer, evidencing that the proposed scheme of corporate restructuring has been approved: (a) in accordance with the applicable provisions of the Companies Act, 1994; and (b) separately, by a majority of votes cast by public shareholders, excluding sponsors, directors, promoters, the counterparty, persons acting in concert with them and their respective affiliates, shall be submitted. The public-shareholder vote shall have a quorum of at least 10% of the public shareholding, or such other threshold as the Commission may prescribe. Voting shall be conducted through poll and remote e-voting, where feasible. Regulated institutional investors, including ICB, mutual funds, insurers and foreign institutional investors, shall be treated as public shareholders for this purpose irrespective of size of holding, unless they are sponsors, directors, promoters, counterparties, affiliates or persons acting in concert."*

**Rationale.** This preserves minority protection while making the approval threshold more workable, representative and less vulnerable to low-turnout distortion.

## 10. Schedule A, (27) | Independent adviser to audit committee | HIGH

**Issue.** Schedule A, paragraph 27 requires the audit committee of the listed company to recommend the draft scheme after considering the valuation report and to specifically address necessity, rationale, synergies, shareholder impact and cost-benefit analysis. However, even where the audit committee includes independent directors, it may not have independent transaction-advisory capacity to evaluate the fairness and commercial implications of a complex restructuring.

**Recommendation.** Insert the following requirement:

*“The audit committee report shall be supported by an Independent Financial Adviser’s report, prepared by a merchant banker or other eligible adviser independent of the parties to the scheme, addressing the fairness of the consideration, valuation methodology, exchange ratio, dilution impact, related-party implications, and overall effect on public shareholders. The Independent Financial Adviser’s report shall be appended to the audit committee report.”*

**Rationale.** Independent transaction advice would strengthen the evidentiary basis of the audit committee’s recommendation and improve shareholder confidence in the fairness of the scheme. Comparable takeover practice, such as UK Takeover Code Rule 3.1, requires competent independent advice on the fairness and reasonableness of financial terms; a similar IFA report would strengthen the audit committee’s assessment.

## 11. Schedule A, (29) | Proportionate disclosure for smaller non-listed transferors | MEDIUM

**Issue.** Schedule A, paragraph 29 requires extensive five-year certified statements and information from both transferee and transferor companies, including loans, inventory, receivables, turnover, related-party transactions, banking-channel declarations and statutory dues. This is appropriate for listed companies and larger public-interest entities. However, for smaller non-listed companies, the requirement may be disproportionately burdensome and may deter legitimate SME-to-listed-company consolidation.

**Recommendation.** Insert the following proportionality carve-out:

*“For transferor or acquiree companies that are listed companies, public companies, or private companies exceeding such asset, revenue or paid-up-capital threshold as the Commission may prescribe, the disclosures under this paragraph shall apply for the immediately preceding five years or from commencement of business, whichever is shorter. For other non-listed transferor or acquiree companies, the disclosures shall apply for the immediately preceding three years, unless the Commission requires a longer period having regard to the size, complexity, related-party exposure or public-interest implications of the scheme.”*

**Rationale.** This keeps regulatory scrutiny intact while introducing proportionality for smaller non-listed companies.

## 12. Schedule B, (1) and (2) | Valuation methodology flexibility | MEDIUM

**Issue.** Schedule B requires the intended company to justify valuation using at least two methods from absolute valuation and at least two methods from relative valuation. While multi-method valuation is desirable, a fixed numerical requirement may encourage formulaic or unsuitable valuations. For example, the Dividend Discount Model may be inappropriate for non-dividend-paying companies, Price-to-Book may be misleading for asset-light businesses, and peer multiples may be unreliable where comparable listed peers are unavailable.

**Recommendation.** *Replace the fixed 2+2 requirement with the following principle-based standard:*

*“The valuer shall apply at least two valuation methodologies that are most appropriate to the company’s industry, business model, growth stage, asset base, capital structure and availability of reliable data. The valuer shall consider both absolute and relative valuation approaches, where applicable, and shall record reasons for each methodology applied and each material methodology excluded. Where reliable peer data is unavailable, the valuer shall disclose the limitation and explain the alternative basis adopted. The valuation report shall include sensitivity analysis and a reasoned conclusion on the final value or exchange ratio.”*

**Rationale.** A principle-based methodology is more consistent with modern valuation practice and reduces the risk of mechanical or window-dressing valuations. A principle-based comply-or-explain valuation approach would be more consistent with the International Valuation Standards (IVS) 2025, which emphasizes appropriate valuation approaches, data, inputs, models, documentation and reporting rather than mechanical method-counting.

## 13. Schedule B, (4) | Industry classification reference | LOW

**Issue.** Schedule B, paragraph 4 permits reference to the Standard Industrial Classification codes set by the U.S. Securities and Exchange Commission in the absence of local classification. While SIC may still be used in certain regulatory contexts, it has largely been supplemented or replaced for broader statistical and industry-classification purposes by more modern systems such as NAICS and GICS.

**Recommendation.** *Replace the sentence with the following:*

*“In relative valuation, peer company or industry classification shall be recognized on the basis of classification by any legitimate authority of Bangladesh. In the absence of an appropriate local classification, internationally recognized classification systems such as NAICS, GICS, ICB or SIC may be referenced, with reasons for the classification selected.”*

**Rationale.** This modernizes the classification reference while preserving flexibility for the valuer. Because NAICS was adopted in 1997 to replace SIC for modern North American statistical classification, Schedule B should permit North American Industry Classification System (NAICS), Global Industry Classification Standard (GICS) or International Classification Bureau (ICB) alongside Standard Industrial Classification (SIC) where local classification is insufficient.

#### 14. Schedule B, (5)(i) | Discount-rate provision | HIGH

**Issue.** Schedule B, paragraph 5(i) states that the discount rate shall not be less than the yield declared for 10-year Treasury bonds. The intention appears to be to prevent use of an artificially low discount rate. However, in an operating equity valuation, the cost of equity would normally exceed the risk-free rate, while WACC should reflect capital structure, cost of debt, tax effect, risk premium and business risk. A simple Treasury-bond floor may be too general and may be misapplied as a substitute for a proper discount-rate determination.

**Recommendation.** *Replace paragraph 5(i) with the following:*

*“The discount rate used in any discounted cash flow valuation shall be determined with reference to the company’s risk profile, capital structure, industry risk, cost of equity, cost of debt and applicable tax effect. Where the Capital Asset Pricing Model is used, the Bangladesh Government 10-year Treasury bond yield may be used as the risk-free rate, together with an appropriate equity risk premium and beta. Where WACC is used, the valuer shall disclose the basis of capital structure, cost of debt, cost of equity and tax assumptions. Any discount rate lower than the Bangladesh Government 10-year Treasury bond yield shall require specific justification.”*

**Rationale.** This preserves a conservative floor while ensuring that discount rates are determined through accepted valuation principles rather than by mechanical reference to a Treasury yield.

#### 15. Schedule B, (5)(ii) | Revenue-growth cap and exceptions | MEDIUM

**Issue.** Schedule B, paragraph 5(ii) restricts projected revenue growth from being higher than the average growth rate of the last five years of the issuer, while allowing exceptions for BMRE projects, initial high-growth companies and multistage valuation. These exceptions are useful. However, they may still be too narrow for companies emerging from a downturn, ramping up capacity utilization, executing strategic pivots, or having contracted revenue/order book that justifies higher near-term growth.

**Recommendation.** *Replace paragraph 5(ii) with the following:*

*“The revenue growth rate used in the explicit forecast period shall be supported by historical performance, industry growth, capacity utilization, BMRE or expansion impact, contracted revenue, order book, management plans, macroeconomic conditions and other relevant evidence. Where projected growth exceeds the trailing five-year CAGR by more than 20%, the valuer shall provide specific reasoned justification and sensitivity analysis. Terminal growth shall not exceed long-term nominal GDP growth unless specifically justified by exceptional circumstances.”*

**Rationale.** This preserves valuation discipline while allowing legitimate growth assumptions to be considered where supported by evidence.

## C. RECOMMENDED NEW PROVISIONS

### 16. New Rule 1 [under clause 4 (1)] | Dissenting–shareholder exit mechanism | CRITICAL

**Issue.** Schedule A requires submission of a list of dissenting members/shareholders, but the draft Rules do not provide a corresponding exit, buyout, put option or appraisal mechanism. A public shareholder who votes against a control–changing or materially dilutive scheme may be bound by the approved scheme without a clear fair–value exit pathway.

**Recommendation.** Insert the following new rule:

*“Where a scheme involves a change of control, change in the nature of business, dilution of public shareholding by 20% or more, delisting of the listed company, or transfer of substantially all assets or business undertaking of the listed company, every public shareholder who voted against the scheme shall have the right to require the transferee company, acquiror, promoters or such other person as the Commission may specify to purchase its shares for cash.*

*The exit price shall be the higher of: (a) fair value determined under Rule 5 and Schedule B; and (b) the volume–weighted average market price for the 26 weeks preceding the earlier of the public announcement of the scheme or the board approval date.*

*The exit right shall be exercised within 30 days of the Court order or such other period as the Commission may prescribe, and payment shall be made within 15 working days from expiry of the exercise period.*

*A shareholder exercising the exit right shall not be entitled to separately challenge the scheme on grounds already considered at the time of approval, except in case of fraud, suppression of material information or breach of law.”*

**Rationale.** A fair exit mechanism converts minority protection from a purely procedural vote into a substantive remedy in transactions that materially alter ownership, control or economic exposure.

### 17. New Rule 2 [under clause 4(1)] | Residual–minority acquisition after overwhelming approval | CRITICAL

**Issue.** Where a restructuring is approved by an overwhelming majority and results in acquisition of substantially all shares or a control–changing combination, the draft Rules do not provide a clear mechanism for acquisition of residual minority shares. This may leave a small group of stranded minority shareholders and create implementation uncertainty after sanction.

**Recommendation.** Insert the following new rule:

*“Where a scheme or offer forming part of a scheme results in the transferee company, acquiror or its persons acting in concert holding or becoming entitled to acquire not less than 90% of the shares or voting rights of the relevant class, the transferee company or acquiror may, subject to the Court order and Commission approval, give notice to the remaining shareholders of that class to acquire their shares at the same consideration offered under the scheme or at such fair value as determined under Rule 5 and Schedule B, whichever is higher.*

*The residual shareholders shall be given a reasonable notice period and an opportunity to object before the Court or the Commission on limited grounds of unfair value, fraud, suppression of material information or material non–compliance with these Rules.”*

**Rationale.** This would provide an orderly residual-minority mechanism while preserving fairness, notice and objection rights. Comparable regimes such as UK Companies Act 2006 sections 979–982 provide compulsory acquisition rights after a takeover offer reaches the statutory 90% threshold; a Bangladesh-specific residual-minority mechanism may be considered for scheme-linked acquisitions subject to Court/BSEC safeguards.

### 18. New Rule 3 [under clause 8] | Coordination with the BSEC substantial share acquisition/takeover framework | HIGH

**Issue.** Rule 2(a) acknowledges that acquisition of substantial shares or takeover of control of a listed company must comply with the BSEC substantial share acquisition/takeover framework. However, the draft Rules do not clearly specify sequencing, parallel process, exemption conditions or treatment where control is acquired through a Court-sanctioned scheme. This may create uncertainty around mandatory public announcement, open-offer timing and minority-exit protections.

**Recommendation.** Insert the following new rule:

*“Where a scheme would result in acquisition of substantial shares, voting rights or control in a listed company within the meaning of the Bangladesh Securities and Exchange Commission (Substantial Share Acquisition, Takeover and Control) Rules, 2018, the acquiror shall disclose the same in the scheme and comply with the applicable requirements of those Rules.*

*The Commission may require the public announcement and open-offer process to run in parallel with the scheme-approval process or may grant exemption from the open-offer requirement where the scheme has been approved by the requisite public-shareholder approval, contains an equivalent or superior exit mechanism, and adequately protects minority shareholders.*

*The Commission shall specify, in its observations, the sequencing of the scheme approval, open offer, Court sanction, issuance of consideration and post-approval compliance.”*

**Rationale.** This avoids regulatory overlap and ensures that scheme-based acquisitions do not dilute the protections available under the takeover framework. Comparable takeover frameworks, such as rule 10 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, recognize exemptions for certain scheme-mediated acquisitions subject to conditions; Bangladesh should similarly clarify whether a Court-sanctioned scheme triggers, runs parallel with, or is exempted from open-offer obligations.

## 19. New Rule 4 [under clause 9] | Tax-neutrality coordination | MEDIUM

**Issue.** The draft Rules require disclosure and treatment of tax liabilities and tax implications. However, they do not create a tax-neutrality pathway or any formal coordination mechanism with the National Board of Revenue. In share-for-share mergers, demergers or amalgamations, capital-gains tax, stamp duty or loss-carry-forward uncertainty may become a structural disincentive to genuine restructuring.

**Recommendation.** Insert the following new rule:

*“The Commission may, in consultation with the National Board of Revenue, issue guidance or seek appropriate tax treatment for Court-sanctioned schemes of corporate restructuring, including treatment of share-for-share consideration, transfer of assets and liabilities, carry-forward of tax losses subject to anti-abuse conditions, and concessional stamp duty where appropriate.*

*The applicant company shall disclose the expected tax treatment of the scheme, material tax risks, and whether any tax ruling, exemption, approval or clarification has been sought from the National Board of Revenue.”*

**Rationale.** Tax certainty is necessary for legitimate restructuring, particularly where consideration is paid through share exchange rather than cash. Comparable jurisdictions often provide tax-neutral treatment for qualifying amalgamations/demergers; the Commission may coordinate with NBR for a Bangladesh-specific tax-neutrality pathway rather than prescribing tax exemptions directly in securities rules.

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*These comments are submitted in my personal professional capacity as an investment banking practitioner. They represent my individual views and do not constitute legal advice, financial advice, or a corporate position of ClairVise or any other institution. The analysis concerns a draft instrument and is subject to revision before final gazette notification.*