



**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT**

No. SC/NBFC-1-204/R/CRCR/2023/ 53

February 06, 2024

Circular No. 6 of 2024

Subject: Fit and Proper Criteria for Promoters, Board of Directors & Chief Executive Officer of the Corporate Restructuring Companies

The Securities and Exchange Commission of Pakistan (the "Commission"), in exercise of powers conferred under section 17 of the Corporate Restructuring Act, 2016 (the "Act") read with rule 3(1) of the Corporate Restructuring Companies Rules, 2019 (the "Rules"), hereby prescribes the following fit and proper criteria for eligibility assessment of promoters, major shareholders, board of directors and Chief Executive Officer of a Corporate Restructuring Company (CRC): -

1. The Fit and Proper Criteria in relation to a CRC is applicable to the following persons:
 - a. The promoters and major shareholders;
 - b. the directors of the CRC; and
 - c. the chief executive of the CRC.
2. A proposed director or chief executive of the CRC shall not assume the charge of office until their appointment has been approved by the Commission.
3. The application for seeking approval of the Commission under clause (2) shall be submitted by the CRC along with the requisite information required under Annexure "A" and an Affidavit as specified in Annexure "B" of the Circular.
4. The fitness and propriety of any person shall be assessed by taking into account all the relevant factors including but not limited to the following:
 - a. Integrity and track record of such person;
 - b. Financial soundness of such a person;
 - c. Competence and capability of the person; and
 - d. Conflict of interest of such person with the business of the CRC.

Provided that clause 4(c) and 4(d) may not be considered while assessing the fitness & propriety of promoters and major shareholders of the CRC.

Provided further that in case the sponsor and major shareholder is a body corporate, in addition to the relevant/applicable clauses, corporate behavior of the said body corporate and integrity & track record of the sponsor and ultimate beneficial owners of such corporate body shall be duly considered.

Explanation: - For the purpose of this clause, the term "ultimate beneficial owner" shall have the similar meaning as defined under 123A of the Companies Act, 2017.

5. The Fit and Proper Criteria is perpetual in nature and a CRC shall ensure compliance with the provisions of Fit and Proper Criteria at all times.



**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT**

SECP

6. All persons subject to Fit and Proper Criteria shall report any change with reference to their fitness and propriety to the Company Secretary within three business days of such change taking effect and the Company Secretary shall within a period of seven business days from the date of receipt, report the same to the Commission.
7. The CRCs shall monitor whether any change in the status of its chief executive and directors is contrary to the requirements of the Fit and Proper Criteria. In case of any change in status, which results in non-compliance with the Fit and Proper Criteria, the Board of CRC shall immediately stop the person from performing his assigned functions, inform the Commission and initiate the process for replacement of the individual with a fit and proper individual.
8. Any violations or circumvention of the Fit and Proper Criteria shall be dealt with under the provisions of the Act.

9. Assessment of Fitness and Propriety

a. **Integrity and Track Record** – A person shall not be considered Fit and Proper if he:

- i. has been convicted of an offence involving moral turpitude; has been convicted of mismanagement of investments, financial or business misconduct, fraud etc.; has been convicted, after conducting an inquiry, by the Commission or any other regulatory or professional body or government agency;
- ii. has been actively involved in the management of a company or firm whose registration or license has been revoked or cancelled or which has gone into liquidation or other similar proceedings due to mismanagement of affairs, financial misconduct or malpractices;

Provided that in case of non-executive nominee directors representing institutional interest and who otherwise do not have any personal interest, the Commission may, after seeking explanation and if satisfied, after reasons to be recorded in writing, relax this requirement on case to case basis subject to such conditions as it may deem fit;

- iii. is ineligible, under the Act or any other legislation or regulation, from acting as a director or serving in a managerial capacity of a CRC;
- iv. has entered into a plea bargain arrangement with the National Accountability Bureau;
- v. in case of promoters or major shareholder, does not have the requisite disclosed and verifiable financial resources; and



**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT**

vi. has been convicted in criminal breach of trust, fraud, offences of terrorism financing or money laundering including predicate offences as provided in the Anti-Money Laundering (AML) Act, 2010, laws made thereunder, or any other AML/ CFT (Countering Financing of Terrorism) requirements notified by the Commission, and is a "proscribed person", either convicted or not, as mentioned in the notifications issued by the Ministry of Foreign Affairs on United Nations Security Councils Resolutions or intimation from National Counter Terrorism Authority/ Law Enforcement Agencies/ Home Departments of Provinces/ Ministry of Interior.

b. Financial Soundness – In determining a person's financial soundness, the following shall be considered:

- i. whether such person's financial statements or record including wealth statements or income tax returns or assessment orders are available;
- ii. whether the person has been declared by a court of competent jurisdiction as defaulter in repayment of loan to a financial institution;
- iii. whether any instance of overdue or past due payment to a financial institution, irrespective of amount, is appearing in the overdue column of latest CIB report of the person and of the companies, firms, sole proprietorship etc. where the person is a chief executive, director (other than nominee director), owner or partner etc.

Provided that the Commission shall provide an opportunity of making representation to the person in case of overdue or past due payment;

Provided further that the following exceptions may be granted by the Commission for the purpose of this sub-clause in case where: -

- (a). Amount overdue is under litigation and the same is also appearing as amount under litigation in the CIB report; and
- (b). No overdue payment appearing in the overdue column in the subsequent latest CIB report;
- iv. whether the person has applied to be adjudicated as an insolvent and his application is pending;
- v. whether the person is an un-discharged insolvent; and
- vi. whether the person has been declared a defaulter by a stock exchange.

c. Competence and Capability – In determining a person's competence and capability the following shall be considered:



**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT**

SECP

- i. the directors should be individuals having management or business experience of at least five years at a senior level;
 - ii. the directors shall have experience and knowledge in any related profession such as banking, accounting, law, internal audit, matters regarding restructuring of companies in distress, financial engineering techniques and skills and capacity to deal with the out of court work etc.
 - iii. the chief executive should have a minimum experience of seven to ten years in a senior management position, preferably in the regulated financial services sector;
 - iv. the chief executive should have demonstrated, through his qualification and experience, the capacity to successfully undertake the cognate responsibilities of the position; and
 - v. where the Commission is not satisfied on sufficiency of the suitability criteria, it may conduct an interview of the chief executive to assess his/her suitability for the position.
- d. **Conflict of Interest** – The promoters, directors and chief executive officer shall not:
- i. be the promoter, director or chief executive officer in any other CRC; and
 - ii. be member or employee of the Corporate Restructuring Board.

Note: The director or the Chief Executive Officer so appointed, who becomes aware of any probable conflict of interest that may be arising in a matter coming up for consideration at a meeting of the Board related to any bank/financial institution or any other company whose Non-Performing Assets are to be acquired, shall disclose nature of his/her interest immediately to the Board and such disclosure must be recorded in writing in proceedings of the Board, and such director or CEO shall not take part in any deliberation or decision of the Board with regard to such matter.

**Mujtaba Ahmad Lodhi
Commissioner (SCD)**

Distribution:

1. Chief Executive Officers, Corporate Restructuring Companies
2. Ministry of Finance



**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT**

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- iv. Any substantial adverse verdicts against the Company from any Court of Law during the last ten years;
 - v. Details of associated companies and subsidiaries;
 - vi. Details of any inquiry/investigation conducted by any other regulatory or professional body or government agency during the last five years; and
 - vii. Any other information as may be required by the Commission.



**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT**

Annexure – B

**Affidavit
Before the Securities and Exchange Commission of Pakistan
(On Stamp Paper of Appropriate Value)**

I, _____ son/daughter/wife of _____ adult, resident of _____ and holding CNIC/ Passport No. _____ do hereby state on solemn affirmation as under:-

1. That I am eligible for the position of _____ according to the Fit and Proper Criteria _____, provided in the circular;
2. That I hereby confirm that the statements made, undertakings provided and the information given by me including that required under this circular is correct and that there are no facts which have been concealed;
3. That I have no objection if the Securities and Exchange Commission of Pakistan requests or obtains information about me from any third party;
4. That I undertake to bring to the attention of the Securities Exchange Commission of Pakistan any matter which may potentially affect my status for the position of _____ as per the applicable Fit and Proper Criteria;
5. That all the documents provided to Securities Exchange Commission of Pakistan are true copies of the originals and I have compared the copies with their respective originals and certify them to be true copies thereof;
6. That I have not availed any write off from any financial institution during the last five years;
7. That I have not defaulted against any Finance obtained from any financial institution during the last five years;
8. That I have not been placed on Exit Control List (ECL) during the last five years;
9. That I have not been convicted from any Court of Law or entered into any plea bargain with National Accountability Bureau during the last ten years;
10. I hereby confirm that the companies, firms, sole proprietorship etc. where I am a chief executive, director (other than nominee director), major shareholder, owner or partner etc. has no overdue loan payment and instalment outstanding towards banks or other financial institutions;
11. I have not been associated with any illegal banking business, deposit taking or financial dealings;
12. Neither I nor companies in which I am a director or major shareholder has defaulted in paying taxes as on the date of application;
13. I have not been a sponsor, director or chief executive of a defaulting cooperative finance society or finance company;
14. I have never been convicted of fraud or breach of trust or of an offence involving moral turpitude or removed from service for misconduct;
15. I have neither been adjudged an insolvent nor has defaulted in making payments, to my creditors;



**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT**

SECP

16. My net-worth is not less than twice the amount to be subscribed by me personally (not applicable to a nominee director);
17. I do solemnly declare that no investigations have been initiated against me by any Law Enforcement Agencies.

DEPONENT

The Deponent is identified by me

Signature _____
**ADVOCATE
(Name and Seal)**

Solemnly affirmed before me on this _____ day of _____ at _____ by the Deponent above named who is identified to me by _____, Advocate, who is known to me personally.

Signature _____
**OATH COMMISSIONER FOR TAKING AFFIDAVIT
(Name and Seal)**