

GOVERNMENT OF PAKISTAN
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

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Islamabad, the 18th November, 2020

NOTIFICATION

S. R. O.1229 (I)/2020.- The following draft amendments to Debt Securities Trustees Regulations, 2017 proposed to be made by the Securities and Exchange Commission of Pakistan in exercise of the powers conferred under section 169 of the Securities Act, 2015 (III of 2015), are hereby published for the information of all the persons likely to be affected thereby and notice is hereby given that objections or suggestions, if any, received within fourteen days from the date of its placement on the website of the Commission, shall be taken into consideration by the Securities and Exchange Commission of Pakistan, namely:-

In the aforesaid Regulations, -

(1) In regulation 2, -

(a) in sub-regulation (1), -

(i) in clause (d), for the words “under section 69 of the Act” the words “by the Commission, which may also be called investment agent” shall be substituted;

(ii) in clause (e), in sub clause (iii) for the words “to persons referred to and notified under section 120 of the Ordinance”, the words “by an issuer” shall be substituted;

(iii) clause (f) shall be substituted with the following:

“(f) “Companies Act ” means the Companies Act, 2017 (XIX of 2017);”

(iv) clause (g) shall be omitted;

(v) for clause (h), following shall be substituted:

“(h) “Issuance agreement” means an agreement executed between the issuer and the investment agent for issuance of debt securities:

Explanation: Trust deed used in any other law administered by the Commission for issuance of debt securities shall have same meaning as issuance agreement.”

- (b) in sub-regulation (2), for the word “Ordinance” the words “Companies Act” shall be substituted;

(2) In regulation 11, -

- (a) in the heading and the details, after the word “Debt securities trustee” where ever appearing, the expression “/Investment agent” shall be inserted;

- (b) for clause (i) and (ii), following shall be substituted:

- “(i) sign an issuance agreement with the issuer before commencement of the subscription period which inter-alia contain that it has agreed to act as an agent under the issuance agreement for securing the interest of the Debt securities holders;

- (ii) ensure that issuance agreement contains all terms and conditions specified in Schedule I;”

- (c) clause (iii) shall be omitted;

- (d) in clause (iv) for the words “trust deed” the words “issuance agreement: shall be substituted;

- (e) for clause (vi) following shall be substituted:

- “(vi) ensure that in case of secured debt securities,

- (a) appropriate security has been arranged and based on the information obtained from the issuer, the assets backing the debt security are maintained throughout the tenure of the Issue;

- (b) Charge is created on relevant assets through letter of hypothecation or letter of lien in favor of investment agent for the benefit of debt security holders

- (c) Charge is registered with the Commission as per the Companies Act.”

- (f) in clause (vii) for the words “the Trust Deed” the words “the issuance agreement” shall be substituted;

- (g) in clause (viii) for the words “relevant Trust Deed and the Trust Act” the words “issuance agreement” shall be substituted;

- (h) in clause (ix), (x) and (xi), for the words “Trust Deed” where ever appearing, the words “issuance agreement” shall be substituted;

- (i) in clause (xvi), for the words “Trust Deed”, the words “issuance agreement” shall be substituted. In sub clause (b), for the words

“Trust Deed”, the words “issuance agreement” shall be substituted and after the expression “restructuring/rescheduling, as” for the words “the trustee” the word “it” shall be substituted.

- (j) in clause (xvii), after the words “Debt securities trustee” where ever appearing, the expression “/Investment agent” shall be inserted;
 - (k) in clause (xix) and (xx), for the words “Trust Deed” where ever appearing, the words “issuance agreement” shall be substituted;
 - (l) in clause (xxi), for the words “Trust Deed” the words “issuance agreement” shall be substituted and for the word “Ordinance”, the words “Companies Act” shall be substituted;
 - (m) in clause (xxiii), for the word “trusteeship” the expression “investment agent/trustee” shall be substituted;
 - (m) in clause (xxx), after the word “Debt Security Trustee” the expression “/investment agent” shall be inserted;
- (3) In regulation 12,-
- (a) in the heading, after the words “Debt securities trustee”, the expression “/Investment agent” shall be inserted;
 - (b) in clause (b), after the word “Debt securities trustee” the expression “/investment agent” shall be inserted;
- (4) In regulation 13, including the clause (i), (ii), (iii), (iv) and (v), after the word “debt securities trustee”, where ever appearing the expression “/investment agent” shall be inserted;
- (5) In regulation 14,-
- (a) in sub regulation (1), after the words “Debt securities trustee”, the expression “/Investment agent” shall be inserted;
 - (b) in sub regulation (2), -
 - a. in clause (a), after the words “Debt securities trustee”, the expression “/Investment agent” shall be inserted.
 - b. In clause (b), for the words “Trust Deed” the words “issuance agreement” shall be substituted.

- c. In clause (c), in the proviso, after the words “Debt securities trustee”, the expression “/Investment agent” shall be inserted.
 - (c) in sub regulation (3), before the word “officer”, appearing for the second time, the word “concerned” shall be inserted and the text “heading the trusteeship department of the Debt securities trustee” shall be omitted.
 - (d) in sub regulation (4), after the words “Debt securities trustee”, the expression “/Investment agent” shall be inserted;
- (6) In regulation 15,-
 - (a) in sub regulation (1), after the words “Debt securities trustee”, the expression “/Investment agent” shall be inserted and for the words “trusteeship transaction” the words “transaction and performing its duties” shall be substituted;
 - (b) in sub regulation (2), (3), (4), (5) and (6), after the words “Debt securities trustee”, where ever appearing, the expression “/Investment agent” shall be inserted;
- (7) In regulation 16,-
 - (a) in the heading and in sub regulation (1), after the words “Debt securities trustee”, where ever appearing, the expression “/Investment agent” shall be inserted;
 - (i) for clause (a), following shall be substituted:
 - “(a)” all contracts relating to the Issue to which it is acting as a Debt securities trustee/investment agent including but not limited to issuance agreement , letter of hypothecation, letter of lien, memorandum of deposit of title deed and the charge registration certificate, where applicable etc.;
 - (ii) in clause (d), for the words “Trust Deed”, the words “issuance agreement” shall be substituted;
 - (b) in sub regulation (2) and (3), after the words “Debt securities trustee”, where ever appearing, the expression “/Investment agent” shall be inserted;
- (8) For Schedule I, following shall be substituted:

“SCHEDULE I [regulation 11]

CONTENTS OF ISSUANCE AGREEMENT:

The issuance agreement should contain all the necessary terms and conditions including the following:

1. The Issuer

All obligations and responsibilities of the issuer under the Act, the Regulations, and any other applicable law or directions by the Commission including the following:

- (i) its obligation for maintaining proper record of its books of accounts and keeping it open for inspection by the Debt securities trustee/investment agent;
- (ii) its obligations for maintaining proper register of debt securities holders with their addresses, record of subsequent transfers and changes of ownership;
- (iii) its obligations for facilitating the Debt securities trustee/investment agent to enter its premises and inspection of the charged assets, if any;
- (iv) its obligations for intimating the Debt Securities Trustee/investment agent of all orders, directions, notices of the courts of law affecting or likely to affect the charged assets or interest of the debt securities holders;
- (v) its obligations for submitting any document or information including copies of financial reports; auditor's certificate on maintaining minimum redemption reserve fund, if required; report on redemption of debt securities; report on conversion of debt securities, if they are convertible; report on dividend payment, contracts relating to the Issue and detail of the assets backing the debt security etc. as and when required by the Debt securities trustee/Investment agent;
- (vi) its obligations for keeping the charged assets, if any, in proper condition;
- (vii) its obligation to create a charge in case of secured instrument through letter of hypothecation or letter of lien in favor of debt securities trustee/ investment agent.

- (viii) its obligation to register the charge with the Commission
- (ix) its obligation to pay the profit and the principal amount;
- (x) its obligation to seek prior consent of the Debt securities trustee/investment agent for declaration of any dividend, if so required.
- (xi) its obligations for reporting to Debt securities trustee/investment agent before any change in the nature and conduct of business of the issuer;
- (xii) its obligations for submitting periodical report on semi-annual basis to the Debt securities trustee/investment agent containing at least the following:
 - a) register of debt securities holders;
 - b) number and nature of grievances received by the issuer from debt securities holders and status of resolution thereof;
 - c) amount of markup due but unpaid and reasons for non-payment thereof and detail of due but unpaid /undelivered payments, if any;
 - d) a declaration confirming that its assets which are available by way of security are sufficient to discharge the claims of the debt securities holders as and when they become due.
- (xiii) its obligations for submission of its annual audited accounts to the Debt securities trustee/investment agent within thirty (30) days from the date of the general meeting in which such accounts are approved;
- (xiv) its obligations to conduct and manage its business affairs with due diligence and efficiency in accordance with sound financial practices;
- (xv) its obligations to inform the Debt securities trustee/investment agent about the material change in its shareholding structure and the Board of Directors;
- (xvi) its obligations to provide the Debt securities trustee'/investment agent information about its financial condition, business and operations as and when requested by the Debt securities trustee/investment agent;

- (xvii) its obligation to inform the Debt securities trustee/investment agent regarding any change in the utilization of proceeds of the Issue where the offering document sets out specific purpose for the utilization of the proceeds of the issue;
- (xviii) its obligations to furnish to the Debt securities trustee/investment agent copies of all documents, reports, notices, circulars and particulars which the issuer provides to its creditors;
- (xix) its obligations to immediately inform the Debt Securities Trustee/investment agent of the occurrence of any event of default;
- (xx) its obligations that until all the amounts payable by the issuer in relation to the debt security have been paid in full to the satisfaction of the Debt securities trustee/investment agent, the issuer shall not without prior written consent of the Trustee/investment agent;
 - a) sell, transfer or otherwise dispose of, except in the ordinary course of business, any of the charged assets or more than 20 per cent of its undertaking or assets or permit any merger, consolidation, dismantling or reorganization;
 - b) create or permit to subsist any pari passu or superior security interest over the charged assets or any portion thereof except in accordance with inter-creditor agreement, if any, to which the Debt securities trustee/investment agent is a party;
 - c) demolish or remove any part of the buildings which are part of the secured assets or the fixtures and fittings annexed thereto except in the ordinary course of repair, maintenance, replacement or improvement;
 - d) change its memorandum or articles of association, in a manner that may adversely affect its ability to perform its obligations in respect of the debt security Issue;
 - e) take any action which is likely to result in a material adverse change in the Issue; and (f) declare or pay any dividends after the occurrence of any event of default.

- (xxi) its obligation to ensure that the assets of the Issuer backing the debt security are maintained and sufficient to discharge its obligations as the issuer;
- (xxii) its obligation to ensure that all information provided to the Debt securities trustee relating to the issue is accurate and that it has not concealed any material facts/information.

2. Obligations of the Issuer in case of rescheduling, restructuring etc.— Where the issuer intends to reschedule or restructure the debt security issued by it, it may do so subject to fulfilment of the following conditions namely:

- (i) The issuer shall call general meeting of debt securities holders for obtaining approval of the proposed rescheduling or restructuring
- (ii) A statement annexed to the notice of the meeting shall set out all material facts as as per the Companies Act including instrument's latest credit rating, if any;
- (iii) In case of listed debt securities, the issuer shall, prior to sending the notice to holders of debt securities, file a copy of the notice and proposed resolution with the Commission, the Trustee/investment agent, the credit rating company and the securities exchange, for dissemination of the same to public on its website;
- (iv) The rescheduling or restructuring of an issue of a listed debt security shall be undertaken by way of approval of at least two third majority of the debt securities holders in value for the time being outstanding;
- (v) The issuer shall redeem the listed debt securities held by the individual small investors holding securities up to Rs.500,000;
- (vi) Supplementary issuance agreement shall be executed at the time of such rescheduling or restructuring;
- (vii) Additional security shall be arranged, if required;

3. Purpose and salient features of the Issue:

Complete detail and information regarding the following:

- (a) Purpose of the Issue, utilization of the proceeds thereof and Issue size.
- (b) tenure of the Issue.

- (c) markup/coupon rate.
- (d) redemption schedule.
- (e) options like call option, put option and conversion option, if any, and in case of conversion option, the conversion procedure.
- (f) debt equity ratio (the company's long-term debt/equity ratio and the company's total debt/equity ratio both before and after the issuance of the debt security).
- (g) debt service coverage ratio, if applicable.

4. Details Of the assets backing the debt security if applicable:

- (a) Nature of the assets.
- (b) Book value of the assets as per the latest audited accounts of the issuer.
- (c) Nature of the existing charge(s) viz floating, exclusive, pari passu, ranking etc. on the charged assets and total amount of such charges.
- (d) Nature of charge(s) established in favor of the Debt securities trustee/investment agent.
- (e) Circumstances under which security becomes enforceable and procedure for enforcing the charge
- (f) Minimum amount of the security to be maintained at all times during the tenure of the debt security.
- (g) Procedure for successive valuation of the assets backing the debt security, if required
- (h) Procedure for inspection of the charged assets and books of accounts by the Debt securities trustee/investment agent or any person or persons authorized by it.
- (i) Mechanism for preservation of the assets backing the debt security.
- (j) Circumstances under which the security may be disposed off or leased out with the approval of the Debt securities trustee/investment agent.

5. Procedure for Enforcement of Security and related risk factors

The procedure for enforcement of security in case of default by the issuer and risk factors connected to the enforcement of security should be provided in detail.

6. Details of charge, if any that has been created by the issuer on issue specific assets for securing other loans.

7. Covenants

i. Details of the agreements executed by the issuers with its creditors and covenants thereof.

ii. Details of covenants both positive and negative, if any in relation to said debt security issuance

8. Events of Default:

All the events, which if occurred shall require the Debt securities trustee/Investment agent to initiate the actions, proceedings including enforceability of the security for safeguarding interest of the debt securities holders, should be defined

9. Rights of Debt securities trustee/Investment agent in case of issuer's default:

(i) right of the Debt securities trustee/investment agent to inspect any document of the issuer relating to the Issue including the books of accounts, contracts relating to assets backing the debt security, the register of debt securities holders and shareholders etc. and to take copies and extracts thereof.

(ii) the right of Debt securities trustee/investment agent to appoint nominee director(s) on the board of the issuer in the case of default.

(iii) right of the Debt securities trustee/investment agent to call meeting of the debt securities holders, the events under which such meeting may be called and minimum quorum for the meeting of debt securities holders.

(iv) right of the Debt securities trustee to approach a court of competent jurisdiction in the event of any default by the issuer and its failure to comply with the covenants of the issuance agreement.

10. Rights of the debt securities holders:

i. to call meetings;

- ii. to vote at the general meetings of the debt securities holders;
- iii. to initiate proceeding against the issuer in case of event of default or any other noncompliance by giving notice in writing to the investment agent.

Provided that to initiate proceeding: (i) approval of at least 51% of debt securities holders in value for the time being outstanding shall be required or (ii) as specified in the issuance agreement; and

- iv. to replace the Debt securities trustee/investment agent if it contravenes any provision of the Act, the Companies Act, these Regulations, its obligations under the issuance agreement

11. Duties/power of Debt securities trustee/Investment Agent:

All obligations and duties of the Debt securities trustee/investment agent under the Act, the Companies Act, these Regulations, or the issuance agreement and any other applicable law including the following:

- (i) its obligation to regularly monitor payment of profit to the debt securities holders and redemption of the debt security and ensure that it is according to the redemption schedule provided to the debt securities holders.
- (ii) its obligation to monitor delay or default in payment of profit and redemption of principal amount to the debt securities holders.
- (iii) its obligations towards regularly monitoring compliance by the issuer with all the covenants of the Issuance agreement.
- (iv) its obligations of reporting to the debt securities holders about actual or potential breaches of its own or the issuer's obligations along with remedial steps taken or to be taken and the manner and time period during which the debt securities holders shall be informed of such breaches.
- (v) its obligation to monitor on semi-annual basis the quantum of security, through which the Issue is secured, and to ascertain whether the security of the issuer backing the debt security is sufficient to discharge

the claims of debt securities holders as and when they become due.

- (vi) its obligation in case of impairment of the security; and
- (vii) its obligation to enforce security, where necessary, in the interest of the debt securities holders.

12. Removal and Resignation of the Debt securities trustee/investment agent:

- i. Provide in details the instances and procedure for the retirement, removal and resignation of the Debt securities trustee/investment agent including appointment of new Debt securities trustee/investment agent.
- ii. Procedure for modifications/rectification in the issuance agreement.
- iii. clause prohibiting any unilateral modification/ amendment by either party to the issuance agreement.

13. Miscellaneous:


- (a) Provisions for redressal of grievances of debt securities holders.
- (b) Provision that the Debt securities trustee/investment shall not relinquish from its assignment unless another Debt securities trustee is appointed.
- (c) fee or commission of the Debt securities trustee/investment agent.
- (d) Provisions relating to the quorum, voting, whether meeting of the debt securities holders may be convened by the issuer, the Debt securities trustee and/or by the debt securities holders, minimum holding for convening meeting by debt securities holders etc.
- (e) Procedure for initiating action against the issuer in event of default or any other non-compliance
- (f) Procedure for enforceability of the security backing the instrument
- (g) Conditions under which the provisions of issuance agreement or the terms and conditions of the issue may be changed.

- (h) Provisions relating to the creation and maintenance of redemption reserve fund, if any.
- (i) Indemnification of the Debt securities trustee/investment agent.
- (j) Preferential treatment, if any, to any class of investors in case of redemption of debt securities or in the event of default or rescheduling/ restructuring of debt security.
- (k) Extinguishment of the issuance agreement.

Note:

- (l) The arrangement for rendering services as Debt securities trustee/investment agent does not absolve the issuer of the obligations and responsibilities placed on it under the Act, the Companies Act, these Regulations and the issuance agreement.
- (m) The Debt securities trustee/investment agent may incorporate additional clauses, provided that the additional clauses do not dilute or contravene the provisions of the Act, the Companies Act, these Regulations or the Issuance agreement particularly of the above clauses.”

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(Bilal Rasul)
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