

PART-II

Statutory Notifications (S.R.O)

Government of Pakistan

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

NOTIFICATION

Islamabad, the ... April, 2017

S.R.O. (I)/2017.— The following amendments to the Issue of Sukuk Regulations, 2015 are proposed to be made by the Securities and Exchange Commission of Pakistan in exercise of the powers conferred by section 506A of the Companies Ordinance, 1984 (XLVII of 1984) read with section 120 thereof, are hereby published for the information of all persons likely to be affected thereby and notice is hereby given that objections or suggestions if any, received within a period of fourteen days from the date of its publication in the official Gazette, shall be taken into consideration, namely:-

DRAFT AMENDMENTS

In the aforesaid Regulations,-

(1) In regulation 2, in sub-regulation (1),-

(a) clauses (a) and (g) shall be omitted;

(b) for clause (k) the following shall be substituted, namely:-

“Shariah Advisor” means a Shariah Scholar, a firm or a company who meets the fit and proper standards specified by the Commission or the State Bank of Pakistan for Shariah advisory services;” and

(c) for clause (q) the following shall be substituted, namely:-

“Sukuk” means an instrument of equal value representing undivided share, in ownership of the identified tangible assets, usufruct and services or in the ownership of the assets of particular projects or special investment activity.”

(2) in regulation 4,-

(a) in sub-regulation 1, in clause (b) for the word, “has” the word “may” shall be substituted;

(b) in sub-regulation 4,-

- (i) for the word, “tenure” the word “tenor” shall be substituted; and
 - (ii) for the word, “principle” the words “principal” shall be substituted;
- (c) in sub-regulation 7, after the word words “ordinary shares” appearing for the first time, the words “of the issuer” have been inserted; and
- (d) after sub-regulation (8), the following new sub-regulation shall be inserted, namely:-
- “(9) The prospectus shall also be available on the issuer’s website and all fees and expenses, actual or estimated for Shariah advisory and Shariah audit shall be disclosed in the prospectus with detailed breakup.”;
- (3) in regulation 5,-
- (a) in sub-regulation 2, for the full stop at the end the following shall be substituted, namely:-
- “including the following-
- (a) why the structure is free from riba, and how it is different from a comparable conventional structure based on lending money at interest;
 - (b) whether and to what extent the return to Sukuk holders is attributable to the underlying assets;
 - (c) whether and to what extent the ownership of underlying assets, belongs to the Sukuk holders;
 - (d) whether and to what extent agreements and undertakings, separately and collectively, are consistent with the concerned Shariah principles; and
 - (e) exceptions, reservations, and qualifications regarding Shariah compliance, if any, and details thereof.”;
- (b) in sub-regulation (4),-
- (i) for the word, “*tenure*” the word “tenor” shall be substituted;
 - (ii) after the word “replacement” the expression, “or change.” shall be inserted, and thereafter the expression “A Shariah Advisors shall not be changed or replaced unless another Shariah Advisor is appointed.” shall be inserted.

- (c) in sub-regulation (5),-
 - (i) after the word “to” the expression “he/she/” shall be inserted; and
 - (ii) after the word “it” the expression “and the issuer shall also provide to the Shariah Advisor access to all the books, accounts and transaction documents”; and
- (d) after sub-regulation (6), the following new sub-regulation shall be inserted, namely:-

“(7) In case of public offer of Sukuk, any replacement or change of the Shariah Advisor shall be reported along with reasons thereof to the Commission, the Exchange and to all the Sukuk holders within fifteen days of the change or replacement.”;
- (4) in regulation 6,-
 - (a) in sub-regulation (1), the word, “by at least two underwriters” shall be omitted; and
 - (b) in sub-regulation (4),-
 - (i) in clause (b), the word “and” shall be omitted;
 - (ii) in clause (c) for the full stop at the end a semi colon shall be substituted and thereafter the word “and” shall be inserted; and
 - (iii) after sub-clause (c), amended as aforesaid, the following new clause have been inserted, namely:-

“(d) issuance of Sukuk is made for repayment of debt.”
- (5) in regulation 7, after sub-regulation (2), the following new sub-regulation shall be inserted, namely:-

“(3) The investment agent shall endeavor that assets are transferred to Sukuk holders through an SPV and in case the Sukuk is issued without establishment of SPV then Shariah Advisor should give reasons referring to Shariah principles for allowing issuance of Sukuk without establishment of an SPV and what additional measures have been taken for the protection of assets of Sukuk issue and protection of rights of Sukuk holders.”; and
- (6) in regulation 9, after sub-regulation (3), the following new sub-regulation shall be inserted, namely:-

(4) The actual external Shariah audit fee attributable to the issue of Sukuk shall be disclosed in the audited financial Statements of the issuer.”

[No. SMD/CIW/Misc./07/2009]

(Bilal Rasul)
Secretary to the Commission