

GOVERNMENT OF PAKISTAN
Securities and Exchange Commission of Pakistan

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Islamabad, the 18th January, 2023

NOTIFICATION

S.R.O. 43 (I)/2023.- The following draft of certain further amendments in the Corporate Restructuring Companies Rules, 2019, which the Securities and Exchange Commission of Pakistan, with the approval of the Federal Government, proposes to make, in exercise of the powers conferred by section 15 of the Corporate Restructuring Companies Act, 2016 (XXXII of 2016), is hereby published for information of all persons likely to be affected thereby, and as required by sub-section (2) of section 15 of the said Act XXXII of 2016, notice is hereby given that objections or suggestions thereon, if any, may for consideration of the Securities and Exchange Commission of Pakistan be given within fourteen days of the publication of the draft in the official Gazette. Objections or suggestions, if any, received before the expiry of the said period shall be taken into consideration by the Securities and Exchange Commission of Pakistan, namely: -

DRAFT AMENDMENTS

In the aforesaid Rules, -

- (1) in rule 2, in sub-rule (1), after clause (a), the following new clause shall be inserted, namely: -
“(aa) **“Board”** means Corporate Restructuring Board as defined in clause (b) of sub-section (14) of section 8A of the Act;”;
- (2) after rule 5, the following new rules shall be inserted, namely: -

“**6. Liquidation of trust.** - (1) The trust may be liquidated by occurrence of any of the following events subject to approval of three-fourth majority of beneficiaries of the trust, -

- (a) when the objective for establishment of trust including acquisition, disposal, resolution or settlement of non-performing assets has been achieved and net proceeds of such assets have to be disbursed as per the constitutive document of the trust and transfer and assignment agreement;
- (b) where the corporate restructuring company goes into liquidation, becomes bankrupt or has a liquidator appointed over its assets, or its licence has been cancelled or it does not hold a valid licence;
- (c) if in the opinion of the corporate restructuring company, the trust

is not commercially viable or the purpose of the trust cannot be accomplished; and

- (d) on occurrence of any event or circumstances which, in the opinion of the corporate restructuring company, requires the trust to be liquidated.

(2) Where the trust is to be liquidated, the Board shall present to its board of directors, the relevant information with regard to the realization of proceeds of the trust property including non-performing assets and prescribed manner of disbursement of net proceeds as defined in the constitutive document of the trust and transfer and assignment agreement for seeking permission for liquidation of the trust:

Provided that where a trust is to be liquidated in terms of clause (b) of sub-rule (1) and a liquidator is appointed, the liquidator shall prepare or cause to be prepared such information and may take necessary measure for liquidation of trust:

Provided further that the corporate restructuring company shall intimate to the Corporate Restructuring Board regarding decision of liquidation of trust within three days of such decision, failing which the Commission may, upon intimation by the Board, initiate proceedings against the corporate restructuring company in terms of section 13 of the Act.

(3) The proceeds from the sale of the trust property including non-performing assets shall be first utilized towards discharge of such liabilities as are due and payable under the trust. After making appropriate provision for meeting the expenses connected with such liquidation, the balance shall be paid to the beneficiaries in proportion to their respective interest in the assets of the trust.

(4) On the completion of the liquidation process of the trust, the corporate restructuring company shall present to its board of directors a report on the liquidation process containing particulars including the steps taken for disposal of assets of the trust before liquidation, expenses of the trust for liquidation, net assets available for distribution to the beneficiaries and a certificate from the auditors of the trust in this regard:

Provided that where a trust is to be liquidated in terms of clause (b) of sub-rule (1) and a liquidator is appointed, the report on the liquidation process of the underlying trust shall be prepared or caused to be prepared by the liquidator:

Provided further that the aforesaid report shall also be made available to the beneficiaries of the trust by the Corporate Restructuring Company or the liquidator, as the case may be.

(5) In process of liquidation of a trust, the Corporate Restructuring Company or the liquidator, as the case may be, shall comply with the applicable provisions of the prevalent provincial Trust laws.

7. Composition, appointment and governance of the Board and its code of conduct. - (1) With effect from such date as the Federal Government may, by notification in the official Gazette, appoint, there shall be established, for the purposes of the Act, a Board by the name of the Corporate Restructuring Board.

(2) The office of the Board shall be at such place as the Federal Government may, by notification, specify.

(3) The Board shall comprise maximum five whole-time members who shall be appointed by the Federal Government in accordance with the approved procedure. Not more than three of these members, shall be appointed from private sector:

Provided that these members shall meet the following criteria: -

- (a) practitioners with at least twenty years working experience in the fields of banking, accountancy, law or economics;
- (b) should have served in senior level positions in their relevant field in private or public organizations;
- (c) at least two of the members should have five years' experience of business revival and rehabilitation and matters ancillary there to;
- (d) shall be the persons of integrity, expertise, eminence and having relevant experience and sound knowledge of dealing with company law or recovery of non-performing assets or restructuring and rehabilitation of companies in financial distress; and
- (d) shall not be more than age of 62 years at the time of his/her appointment;

(4) The Federal Government shall designate one of the members to be the Chairman of the Board.

(5) Subject to this Rules, the following procedure may be observed by the Federal Government for the appointment of members of the Board, -

- (i) The Minister-in-Charge of the Federal Government shall constitute a Selection Committee who shall be responsible for shortlisting and recommending suitable candidates to the Ministry of Finance for onward submission to the Cabinet for the appointment of members;
- (ii) The Selection Committee shall, -
 - (a) formulate job description, eligibility criteria and skills required for the position of members;
 - (b) decide evaluation parameters in accordance with the criteria as provided in this rule;

- (c) place a public advertisement in at least three daily newspapers having wide circulation. The advertisement shall also be placed on the website of the relevant Ministry; and
- (d) finalize a list of such number of eligible candidates as the Selection Committee may deem fit, in order of merit, based on eligibility criteria, for an interview;
- (iii) where the Selection Committee is not satisfied with the quality of the candidates, it may re-advertise and start the process afresh; and
- (iv) the Ministry of Finance will submit a panel of selected candidates, three candidates against each position, to the Cabinet for approval.

(6) The Chairman and the members shall be appointed for a period of not more than five years and their term shall not be renewable or extendable. The Chairman shall be the chief executive officer of the Board and along with the other members shall, subject to the procedure made by the Board, be responsible for policy and administration of the affairs of the Board.

(7) The members and employees of the Board shall be subject to the code of conduct provided in Annexure-B to these rules.

(8) No member shall be appointed or cease to continue as a member, if –

- (a) in the opinion of the Federal Government the performance of member is not satisfactory, it may give one month notice to the member to cease to hold the office;
- (b) he has been convicted of an offence involving moral turpitude;
- (c) he has been or is adjudged insolvent by a court of law;
- (d) he is incapable of discharging his duties by reasons of physical, physiological or mental unfitness and has been so declared by a registered medical practitioner appointed by the Federal Government;
- (e) he, being a member, absents himself from three consecutive meetings of the Board, without leave of the Board;
- (f) he fails to disclose any conflict of interest at or within the time provided for such disclosure or contravenes any of the provisions of the Act pertaining to unauthorized disclosure of information;
- (g) he has so abused his authority in official capacity as to render his continuation in office detrimental to the public interest; and
- (h) he has entered into a plea bargain arrangement with the National Accountability Bureau or any other regulatory body:

Provided that no member shall be removed under clause (g) unless he has been provided a reasonable opportunity of being heard.

(9) Subject to sub-rule (10), appointment of any member may, at any time, be revoked and he may be removed from his office by order of the Federal Government if it is found that such person stands disqualified under sub-rule (8):

Provided that the Federal Government may by recording the reasons in writing remove a member from the office if in its opinion it is expedient in the public interest so to do.

(10) Unless a disqualification referred to in sub-rule (9) arises from the judgment or order of a court or tribunal of competent jurisdiction under any relevant provision of applicable law, a member shall not be removed or his appointment revoked without an inquiry by an impartial person or body of persons constituted in accordance with such procedure, as may be notified by the Federal Government.

(11) A member may at any time resign from his office by a written notice addressed to the Federal Government.

(12) The office of a member or Chairman shall ipso facto be vacated if he dies.

(13) The quorum of the meetings of the Board shall not be less than three including the Chairman:

Provided that participation of members by video conferencing or by other audio-visual means shall also be counted for the purpose of quorum.

(14) Decisions in the meeting of the Board shall be made on the basis of majority votes of the members present and voting, and in the event of an equality of votes, the Chairman shall have a casting vote.

(15) Any casual vacancy occurring on the Board shall be filled up by the Federal Government within ninety (90) days.

(16) A member, who has or who becomes aware of the probable conflict of interest that may be arising in any matter coming up for consideration at a meeting of the Corporate Restructuring Board, shall disclose nature of his interest immediately to the Board and such disclosure must be recorded in writing in proceedings of the Board, and such member shall not take part in any deliberation or decision of the Board with regard to such matter.

(17) A member shall give written notice to the Federal Government of all direct or indirect pecuniary interests that he has or acquires in a body corporate carrying a business in Pakistan.

(18) The members including the Chairman, shall be paid such remuneration and be eligible for such privileges as may be determined by the Federal Government at the time of appointment.

(19) The Board will propose an organizational structure with necessary human resource requirements along with the qualifications, skill set and remuneration for approval of the approval of the Ministry of Finance as it may considers necessary for the efficient discharge of its functions in accordance with the budgetary allocations notified by the Federal Government.

8. Functions of the Board and its members. - (1) The Board shall perform all or any of the following functions, namely: -

- (a) review of the scheme being presented by corporate restructuring company in accordance with the provisions of the Act;
- (b) invite objections to the scheme from all the stakeholders. Objections shall be invited by following process, namely: -
 - (i) the Board shall issue a written notice of at least fourteen days further extendable for three days on just cause, to all parties concerned with the Scheme to file their comments;
 - (ii) the objections shall be filed in writing along with the supporting material and shall be solemnly affirmed by the parties;
 - (iii) any objection received after the deadline shall not be entertained by the Board;
 - (iv) the Board shall appoint a date for personal hearing by giving a written notice of at least seven days to all parties that requested for such hearing, including the applicant company; and
 - (v) the Board shall conclude the review proceedings of the Scheme not later than thirty days of its submission unless there are exceptional reasons justifying the extension for a reasonable period which shall be recorded in writing by the Board;
- (c) call for relevant information and records from corporate restructuring companies and other stakeholders;
- (d) collect and maintain record of proceedings and decisions;
- (e) issue necessary guidelines with regard to presenting the scheme and proceedings of the Board;
- (f) sanction or refuse to sanction the scheme through an order in writing;
- (g) charge such fees and other charges as may be notified by the Federal Government; and

- (h) any other functions ancillary and incidental to the above:
- (2) The Board shall carry out its functions and conduct its business in an orderly manner in accordance with the procedure laid down by the Board.

9. Budgetary allocation for proper functioning of the Board. – (1) The Federal Government may make to the Board such budgetary allocation or grants of such sums of money as it may think fit for being utilized for the purposes of proper functioning of the Board.

(2) There shall be constituted a Fund to be called the Corporate Restructuring Board Fund to which shall be credited—

- (a) all grants, monies and allocations received from such sources as may be notified by the Federal Government;
- (b) any fees and other charges of the Board, as notified by the Federal Government in the official Gazette; and
- (c) such other funds as may be notified by the Federal Government.

(3) The Fund shall be applied for meeting—

- (a) the salaries, allowances and other remuneration of the members and staff of the Board;
- (b) the expenses of the Board in the discharge of its functions; and
- (c) such other purposes as may be notified by the Federal Government.

(4) The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form and manner as may be notified by the Federal Government in consultation with the Auditor General of Pakistan.

(5) The accounts of the Board shall be audited by the Auditor General of Pakistan at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Board to the Auditor General of Pakistan.

10. Contents of the scheme. – There shall be made out and submitted to the Corporate Restructuring Board, along with the scheme, a solemnly affirmed statement as to the affairs of the principal obligor which shall contain the following minimum particulars, namely: -

- (a) particulars of the obligor's assets, debts and liabilities including the detail of cash balance in hand and at the bank;
- (b) the names and addresses of the obligor's creditors including the amount of secured and unsecured debts
- (c) the names and addresses of the persons from whom debts of the obligor are due;
- (d) possession, the place where and the person in whose possession such property may be found; and
- (e) such other particulars as may be required by the Board in the

discharge of its functions under the Act.

11. Call for Information. – For the preparation of a Scheme, a Corporate Restructuring Company may call upon the concerned financial institutions by way of a notice, giving a period of fourteen days, to submit an affidavit of its authorized officer which shall solemnly affirm the following information, -

- (a) the total principal amount owed by the obligors and outstanding as of the date of the notice;
- (b) the type, date and principal amount of each finance facility advanced to the obligors;
- (c) the type, date of creation and registration, amount and ranking of all the security interests, created by the obligors respectively for each finance facility;
- (d) the names of any other financial institutions that share any security interests and the sharing basis;
- (e) the market value and forced sale value of each collateral and property subject to security interest, as assessed by a credible valuator, duly registered with the Pakistan Engineering Council and enlisted as approved professional valuers by Pakistan Banks Association; and
- (f) any other information that the corporate restructuring company may require by notice in this behalf.”; and

(3) after Annexure A, the following new Annexure shall be added, namely: -

“Annexure-B
[see rule 7(7)]

Code of Conduct

For Members and Employees of Corporate Restructuring Board

To whom this Code applies to.- The following persons (*hereinafter referred to as the “Subject(s)”*) shall be subject to this Code:

- (i) Members of Board; and
- (ii) All employees and staff of the Board including temporary, seconded or contract employees, advisers, consultants and outsourced staff.

Violations of this Code may result in disciplinary action, including where appropriate suspension, or dismissal from employment or cessation of appointment.

All the subjects are expected to be aware of and comply with this Code.

1. Conflicts of Interest.- *This section should be read in conjunction with relevant provisions of Corporate Restructuring Companies Rules, 2019 (“CRC Rules”) and*

section 8A of the Corporate Restructuring Companies Act 2016 (“CRC Act”).

1.1 What constitutes a conflict of interest?

A conflict of interest arises when a Subject has an interest, pecuniary or otherwise, which can be regarded as a conflict of interest between his duty to perform his functions under the CRC Act and CRC Rules, and such interest which could impair his ability to consider and decide any question impartially or create bias in his advice. Conflicts of interest may arise in various ways, for example, as a result of

- (i) a direct or indirect financial interest, including an interest held by a commercial undertaking that the Subject has connections with;
- (ii) a personal association or relationship with those affected, or likely to be affected, by the matter;
- (iii) an expectation of a future interest;
- (iv) a previous association with a matter; or
- (v) an interest with a common interest group, such as a public or private entity.

This list is not exhaustive and the situations noted above may not necessarily give rise to a significant conflict of interest in all cases.

1.2. Responsibilities. – 1.2.1. A Subject shall carry out his work in an environment that is free from any suggestion of improper influence and take all reasonable steps to avoid being in an actual, apparent or potential conflict of interest.

1.2.2. A Subject shall take steps to ensure that any conflict of interest to which he may be subject does not affect, or reasonably appear to affect, a decision taken by the Board. It is responsibility of a Subject to disclose potential or actual conflicts of interest with his duties at the Board, as soon as it arises or he becomes aware of it.

1.2.3. No subject shall exploit, or reasonably appear to exploit, to his personal advantage any personal or professional relationships with any obligor, corporate restructuring company, creditor, financial institution, stakeholder or any organization with which the Board may have contractual or business relationship, or an officer or employee of such organizations.

1.2.4. In determining to exercise of powers, Subjects must not suggest, participate in or assist an act aimed at a particular individual for reasons of personal prejudice, vindictiveness or animosity.

1.3. Types of Conflict to Avoid. –

1.3.1. Participation in decision-making. – A Subject shall not participate in making any decisions at the Board if he could benefit from the decision. If a Subject is a member of a body or group, he may not, in the course of his duties at the Board, participate in, or attempt to influence, any decision-making of that body or group

if:

- (i) he could benefit from the decision; or
- (ii) as a result of the decision, the interests of the body or group could conflict with the interests of the Board.

1.3.2. Preferential terms. – A Subject shall not accept the services of an obligor, corporate restructuring company, creditor, financial institution or Board’s stakeholder entity on terms that he knows are more favorable than the entity normally offers.

1.3.3. Preferential treatment. –

During the course of appointment with the Board, a Subject shall not give preferential treatment, or the appearance that he is giving preferential treatment, to any person or entity or any former employee, or member at the Board.

During the course of their appointment with the Board, a Subject shall not offer assistance to any person or entity dealing with the Board other than assistance given in the ordinary course of performing his duties or professional obligations.

1.3.4. Family relationships. – A Subject shall not influence:

- (i) a contract on behalf of the Board with:
 - (a) a member of his family; or
 - (b) a person or entity that he or a member of his family has a significant relationship with or a substantial interest in.
- (ii) directly or indirectly the hiring of a member of his family.

1.3.5. Outside engagements and activities. – A Subject shall not engage in a business or undertaking, outside his employment or appointment with the Board if:

- (i) his private interest in such undertaking could conflict with his duties at the Board;
- (ii) his role at the undertaking would interfere with his ability to perform his duties at the Board;
- (iii) the engagement is in a professional capacity and is likely to influence or harm his ability to perform his duties at the Board; or
- (iv) the Board’s premises, equipment or supplies are used.

1.3.6. Involvement in the Board’s matters. – A Subject shall not exercise his authority in a matter if he:

- (i) has a personal or pecuniary interest relating to the matter that is, or could reasonably be perceived to, conflict with his ability to exercise an unbiased judgment,
- (ii) believe that he would be unable to render an impartial decision, or
- (iii) has continuing or prior associations or relationships, including family and other close personal relationships, that would reasonably be perceived as preventing him from rendering an impartial decision.

1.4. After the Subjects leave the Board. – *(This Section applies to every former employee and Member who worked at the Board)*

To avoid an actual, apparent or potential conflict of interest between his new employment and his former duties with the Board, the following rules apply to the activities after a Subject leaves the Board. These rules are not intended to overly restrict former employees and Members in seeking other jobs.

1.4.1. Confidential information. – A Subject may not use confidential information that he obtained during his employment or appointment with the Board in any business or undertaking. A Subject may not disclose confidential information to any person or entity.

1.4.2. Preferential treatment. – A Subject being former member or employee of the Board may not seek preferential treatment by, or privileged access to, Members or employees of the Board.

1.4.3. Continued involvement in the Board's matters. – A Subject being a former member or employee of the Board may not advise or otherwise assist any obligor, corporate restructuring company, creditor, financial institution, Board's stakeholder entity or any other person or entity in connection with any application, proceeding or other matter that he was involved in when he was working at the Board, unless

- (i) the Board is no longer involved in it, or
- (ii) one of the exceptions noted in 1.5 applies.

1.4.4. Appearing before the Board. – A Subject being former member or employee of the Board may not communicate with, or appear before the Board or employee, on any application, proceeding, hearing or other Board's matter for a period of twelve months unless he:

- (i) advises or otherwise assists the Board with the matter that he was involved in when he was with the Board, or
- (ii) submits written comments to the Board in response to a public request for comment by the Board.

1.4.5. Employment. – A Subject being former member or employee shall not accept employment with an obligor, a corporate restructuring company, creditor, financial institution, a stakeholder of the Board or serve as a member of the Board of directors or other governing body of an obligor, a corporate restructuring company, creditor, financial institution or a stakeholder of the Board within the first 6 months of leaving the Board, if, during the 6 months before leaving the Board, he had:

- (i) substantial involvement with them, and
- (ii) access to confidential information that, if disclosed to them could result in

harm to the Board or could give them an unfair advantage in relation to other parties.

For employees and members, the Board has the authority to determine the substantial involvement and access to confidential information.

1.4.6. Lobbying. – A Subject being former employee or member shall not lobby any member or employee of the Board for, or on behalf of, an obligor, a corporate restructuring company, creditor, financial institution or a stakeholder of the Board for the first 12 months after leaving the Board.

1.5. The disclosures made under this section of the Code will be kept confidential and will not be disclosed except where there is;

- (i) a requirement for disclosure for the purpose of managing potential or actual conflicts or for disciplinary proceedings;
- (ii) any legal or regulatory obligation to disclose the information.

2. Confidentiality. –

2.1. Confidential information is any information that -

- (i) is not available with the public;
- (ii) dissemination of which in any form could result in harm to the Board;
- (iii) possession or access to which could give the person to whom it is disclosed an advantage; or
- (iv) the information is marked as “confidential”

2.2. The Subjects because of their position with the Board, have access to confidential information about Board, its employees, stakeholders, the obligors, corporate restructuring companies, creditor, financial institution, government and other parties that they deal with. The Subjects shall be responsible to safeguard the confidentiality of information that is in their possession or they have access to.

2.3. A Subject shall not use confidential information:

- (i) to directly or indirectly benefit him or anyone else; or
- (ii) in a business or for other activities outside his appointment with the Board

2.4. A Subject shall not disclose confidential information outside the Board unless authorized to do so by law or the Board. A Subject may disclose confidential information to others at the Board only when it is required to properly perform his duties or by law. A Subject must avoid discussion of a matter with any person outside the Board while that matter is pending.

2.5. A Subject shall not use any non-public information in his access related to an obligor, a corporate restructuring company, creditor, financial institution or a stakeholder of the Board for his personal gain or gain of anyone else.

2.6. A Subject shall not inform, other than is necessary to properly perform his duties, another person of non-public information related to an obligor, a corporate restructuring company, creditor, financial institution or a stakeholder of the Board.

2.7. A Subject shall not accept a gift, directly or indirectly, in exchange for disclosing confidential information.

2.8. Any leakage of confidential information would be dealt with as an act of serious misconduct and could attract disciplinary actions.

3. Independence. – 3.1. The Subjects must reject any effort by representatives of the executive or legislative branches of the government to affect their independent determination of any matter being considered by the Board.

3.2. The Subjects must not be swayed by partisan demands, or considerations of personal popularity or notoriety; and perform the functions above fear of unjust criticism by a person, party or group.

3.3. All Subjects must strive to ensure, protect, maintain and promote the independence of the Board at all times.

4. Ethical Responsibilities. – 4.1. Appointment with the Board as member or employee is a high honour and requires that the conduct of the Subjects, not only in the performance of the duties of this office but also in the everyday life, should be beyond reproach.

4.2. The Subjects must act in an honest and ethical manner when dealing with each other, stakeholders and other third parties, to promote trust and confidence.

4.3. The Subjects must not solicit any gift or other item of monetary value from any person or entity seeking decision from, doing business with, or conducting activities under ambit of the Board, or whose interests may be substantially affected by the performance or non-performance of their duties.

4.4. The Subjects must not participate in any private event/function organized by an obligor, a corporate restructuring company, creditor, financial institution or a stakeholder or supplier of the Board and should not invite them in their own private functions.

A member (other than Chairperson of the Board) can participate /invite on such events subject to approval of the Chairperson. This provision is not applicable to the Chairperson however, the disclosure of any such participation and invitation should be made to the Board.

4.5. Lapses in integrity, compromise trust and confidence and undermine Board's

efforts in serving its stakeholders. Any actions casting doubt on the integrity of the Board would be considered as acts of serious misconduct.

4.6. The Subject should recognize their obligation to preserve the sanctity of the processes administered by them and for this purpose pursue vigorously and diligently all matters which they oversee.”.

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(Bilal Rasul)
Secretary to the Commission