

**GOVERNMENT OF PAKISTAN**  
**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN**

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*Islamabad, the 21<sup>st</sup> August, 2017*

**NOTIFICATION**

**S.R.O. 836(I)/2017.-** In exercise of the powers conferred by section 512 of the Companies Act, 2017 (XIX of 2017) read with section 66 thereof and having been previously published in the official Gazette vide Notification No. S.R.O.254(I)/2017 dated April 11, 2017 as required by sub-section (1) of section 506A of the Companies Ordinance 1984 (XLVII of 1984), the Securities and Exchange Commission of Pakistan hereby makes the following Regulations, namely:-

**CHAPTER I**

**PRELIMINARY**

**1. Short title and Commencement.-** (1) These Regulations may be called the “Sukuk (Privately Placed) Regulations, 2017”.

(2) They shall come into force at once.

(3) They shall apply to all Issues of Sukuk privately placed by any company, Special Purpose Vehicle or body corporate to the Qualified Institutional Buyers.

(4) These Regulations shall not apply to an Issue by any company, a Special Purpose Vehicle or body corporate specifically setup by the Federal Government or any provincial Government for the purposes of issue of Sukuk, under any other law.

**2. Definitions.-** (1) In these Regulations unless there is anything repugnant in the subject or context –

(a) “Act” means the Companies Act, 2017;

(b) “Commission” means the Securities and Exchange Commission of Pakistan established under section 3 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);

(c) “Investment Agent” means an institution licensed by the Commission as a Debt Securities Trustee under the Debt Securities Trustee Regulations, 2017, and appointed by the issuer through execution of investment agency agreement. The Investment Agent shall be responsible to facilitate issue and sale of Sukuk under these Regulations and to safeguard interest of the holders of Sukuk;

- (d) "Issue" for the purposes of these Regulations means issuance of Sukuk to Qualified Institutional Buyers through private placement;
- (e) "issuer" for the purposes of these Regulations means a company or Special Purpose Vehicle or body corporate, which issues Sukuk through private placement;
- (f) "Limited Liability Partnership (LLP)" means a partnership registered under the Limited Liability Partnership Act, 2017;
- (g) "Qualified Institutional Buyer (QIB)" means any institution that is authorized by its constitutive document to invest in Sukuk and includes the persons mentioned in section 66 of the Act and notified there under from time to time as persons to whom instruments of redeemable capital including participatory redeemable capital can be issued;
- (h) "Regulations" means the Sukuk (Privately Placed) Regulations, 2017;
- (i) "Shariah Advisor" means an individual, a Limited Liability Partnership (LLP) or a company who/that meets the fit and proper standards specified by the Commission;
- (j) "Shariah Compliant Security" means a security structured on the basis of any of the Shariah concepts;
- (k) "Shariah concepts" for the purpose of these Regulations includes Ijarah, Musharakah, Murabahah, Modaraba, Salam and any other concept allowed by the Shariah Advisor;
- (l) "Shariah Pronouncement" for the purpose of these Regulations means a fatwa, certificate or a Shariah opinion signed by Shariah Advisor in such form and manner as notified by the Commission from time to time;
- (m) "Special Purpose Vehicle (SPV)" for the purpose of these Regulations means a public limited company or a body corporate registered with the Commission under the Companies (Asset Backed Securitization) Rules, 1999;
- (n) "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) Words and expressions used but not defined in these Regulations shall have the same meanings as are assigned to them in the Act, the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997), the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980), the Companies (Asset Backed Securitization) Rules, 1999 and the Securities Act, 2015 (III of 2015).

## CHAPTER II

### ELIGIBILITY AND REQUIREMENTS FOR ISSUE OF SUKUK

**3. Eligibility for Issue of Sukuk.-** An issuer may issue Sukuk under section 66 of the Act subject to the terms and conditions mentioned therein and in these Regulations.

**4. Conditions for Issue of Sukuk.-** (1) An issuer that intends to issue Sukuk shall fulfill the following conditions namely:-

- (a) Prior to issuance of Sukuk, the issuer has appointed an Investment Agent and engaged Shariah Advisor;
- (b) in case of secured Sukuk, it has arranged appropriate security, in the form acceptable to the Investment Agent;

Provided that the above clause (b) shall not apply to a Sovereign Sukuk and a Government Guaranteed Sukuk.

**Explanation 1.-** For the purposes of this regulation the expression "Sovereign Sukuk" shall include Sukuk issued and guaranteed by the Federal Government.

**Explanation 2.-** For the purposes of this regulation the expression "Government Guaranteed Sukuk" shall include Sukuk issued by any corporation or body corporate owned and controlled by the Federal Government and such Sukuk is guaranteed by the Federal Government.

- (c) any other condition as may be specified by the Commission.

(2) Where a Sukuk is structured using a single Shariah concept, the Sukuk shall preferably be named according to that concept.

(3) The issuer shall ensure that proceeds of the Issue are utilized for Shariah compliant purposes and in the form and manner as disclosed in the information memorandum to be circulated to QIBs for inviting subscription.

(4) The Issue shall not embed any swaps, options or other derivatives except in the case of convertible or exchangeable Sukuk.

(5) Where Sukuk are convertible or exchangeable into ordinary shares of the issuer, the option of conversion or exchange, as the case may be, shall be at the discretion of the investors.

**5. Shariah Advisor and Shariah Pronouncement.**– (1) The issuer shall, before the issue of Sukuk, engage Shariah Advisor and obtain in writing from it/him/her, the Shariah Pronouncement. The Shariah Pronouncement must be signed by Shariah Advisor ascertaining that the basis on which the Sukuk are structured is Shariah compliant.

(2) The Shariah Pronouncement must contain at least such information and certification and in the form and manner as notified by the Commission from time to time including the following;

- (a) how the structure is free from *riba*;
- (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 the related agreements and contracts, separately and collectively, are consistent with the concerned Shariah principles; and
- (e) exceptions, reservations, and qualifications regarding Shariah compliance, if any, and details thereof.

(3) The engagement letter or agreement executed with the Shariah Advisor among other things, must clearly define the roles and responsibilities of both parties, dispute resolution mechanism and such other clauses as specified by the Commission from time to time.

(4) The Shariah Advisor may not remain engaged throughout the tenor of the Issue, if the Shariah Pronouncement states so. Where an issuer opts to engage a Shariah Advisor for a longer period, the term of engagement shall be at the discretion of the issuer.

(5) The issuer shall ensure that all relevant documents, contracts, details and information required by the Shariah Advisor for understanding of the transaction, concepts, structure etc. and framing or review of the Shariah Pronouncement are provided and adequately explained to the Shariah Advisor.

(6) In case of rescheduling or restructuring of an Issue, the issuer shall seek Shariah Pronouncement from the Shariah Advisor, afresh.

**6. Appointment of the Investment Agent.-** (1) The issuer shall before the offer of Sukuk appoint an Investment Agent.

(2) The appointment of Investment Agent shall be carried out through execution of an investment agency agreement which shall contain at least such clauses as notified by the Commission from time to time.

(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.

(4) The Investment Agent shall not be associated company or associated undertaking of the issuer.

### CHAPTER III

#### DISCLOSURE AND REPORTING REQUIREMENTS

**7. Disclosure requirements for issuance of Sukuk.-** (1) The issuer shall prepare information memorandum containing all the material information as notified by the Commission from time to time and shall also submit an undertaking on non-judicial stamp paper to the Commission on the format as given at **Appendix-I**.

(2) Information memorandum shall be considered as a private document and shall not to be used as a document inviting the public for subscription of Sukuk and shall be circulated only to the Qualified Institutional Buyers.

(3) The information memorandum must make it unambiguously clear to the investors whether or not the Sukuk are asset backed, that is, based on true sale, providing investors an unqualified right over the concerned assets. If the Sukuk are not asset backed, the information memorandum shall explain the implications, most notably, if the Sukuk holders are assuming credit risk of the issuer and their standing in the hierarchy of creditors.

(4) If Sukuk are issued without transferring concerned assets, where applicable, to an SPV, the issuer shall explain in the information memorandum, why the SPV structure has not been used and any potential implications regarding investor protection and Shariah compliance.

(5) The information memorandum shall specify fees and expenses pertaining to Shariah compliance, including the fee, if any, paid to the Shariah Advisor.

**8. Reporting Requirement.-** (1) The Issue shall be reported, preferably electronically, on the format given at **Appendix-II**, by the issuer to the Commission within fifteen days of its issuance.

(2) The Sukuk issued by an issuer before notification of these Regulations and are outstanding on the date of such notification shall be reported, if not done so, to the Commission on the format given at **Appendix-II** within thirty days of the notification of these Regulations.

(3) The Commission may also require the issuer to furnish such additional information relating to the Issue as the Commission deems appropriate.

(4) The external Shariah audit fee, where applicable attributable to the issue of Sukuk shall be disclosed in the audited financial statements of the issuer.

**9. Disclosures to Sukuk holders.-** The issuer shall furnish the Shariah Pronouncement and the transaction documents to all the Sukuk holders in physical or electronic form or shall make available the same on its website, in downloadable format, for information of the investors.

#### **CHAPTER IV**

##### **DISCIPLINARY PROCEEDINGS**

**10. Consequences of the contravention or breach of these Regulations.-** Where the issuer fails to comply with or contravenes any provision of these Regulations or any directive or order issued by the Commission, the Commission may after providing an opportunity of hearing impose a penalty provided under sub-section (2) of section 512 of the Act and/or direct the issuer to,-

- (a) recall all or any of the Sukuk, issued according to the procedure provided in the order by the Commission;
- (b) take such corrective measures that are necessary to safeguard interest of the Sukuk holders; and
- (c) publish details of the corrective measures taken by the issuer pursuant to the directions of the Commission.

#### **CHAPTER V**

##### **MISCELLANEOUS**

**11. Financial Reporting and Accounting Treatment.-** The issuers of Sukuk shall, while preparing their financial reports, ensure that all the relevant standards, notified by the Accounting and Auditing Organization of the Islamic Financial Institutions and the Islamic

Financial Accounting Standard as notified by the Commission for adoption, from time to time relating to the financial reporting and accounting treatment of Sukuk are complied with.

**12. Shariah Compliance Audit.-** (1) The Shariah Advisor providing the initial Shariah Pronouncement shall state in their Shariah Pronouncement, whether or not Shariah audit of the issued Sukuk is required.

(2) The compliance of features and Shariah requirements of Sukuk shall be audited on annual basis, where applicable under sub-regulation (1).

(3) The issuer shall appoint its own statutory auditors or another firm of Chartered Accountants to perform Shariah audit.

(4) The Shariah audit report, where required shall made part of the annual financial report of the issuer.

**13. Repeal.-** (1) The Issue of Sukuk Regulations, 2015, notified through S.R.O. 112(I)/2015, are hereby repealed.

(2) The repeal of the Issue of Sukuk Regulations, 2015 shall not affect any Sukuk issued under the said regulations and any rights, privileges, obligations or liabilities acquired, accrued or incurred under the said repealed Issue of Sukuk Regulations, 2015.

**FORMAT OF UNDERTAKING ON NON-JUDICIAL STAMP PAPER OF THE REQUIRED VALUE**

The Securities and Exchange Commission of Pakistan,  
NIC Building, 63, Jinnah Avenue,  
Islamabad.

**U N D E R T A K I N G**

I, on behalf of ... (Name of the issuing company)... (the Company) duly authorized by its board of directors hereby undertake that:

(i) the issuer shall forward to the Investment Agent promptly, whether a request for the same has been made or not the following information/documents:

- (a) copy of the latest audited annual accounts and half yearly accounts as and when finalized;
- (b) copy of the notice, resolution and circular relating to new issue of Sukuk, or any other instrument of redeemable capital at the same time as it is sent to the Commission, the Stock Exchange, the shareholders and the Sukuk holders;
- (c) copy of the notice, letter, circular, etc. issued to the Sukuk holders or published in the print media relating to the issue of Sukuk;
- (d) certificate from the auditors of the issuer on maintenance of security in the form and manner required under the Investment Agency Agreement in respect of secured Sukuk on annual basis within one month of the finalization of the annual financial report;
- (e) redemption status of the Sukuk on semi-annual basis till it is fully redeemed;
- (f) status of redemption reserve fund, if any; and
- (g) any other information/document related to the Issue as and when required by the Investment Agent.

(ii) the issuer shall provide access to the Investment Agent to the books of accounts and record relating to the Sukuk.

(iii) the issuer shall submit to the Commission such documents and information as to be required by the Commission.

(iv) the issuer shall maintain security in the form and manner as required under the Investment Agency Agreement, in case of secured Sukuk, at all times till complete redemption of such Sukuk.

(v) the issuer shall notify the Commission the expected default in timely payment of profit or principal amount as soon as the same becomes apparent.



(vi) the issuer shall not forfeit unclaimed profit. The unclaimed profit, if any, shall be kept under a separate head of account namely, "Unclaimed Profit on Sukuk".

(vii) the issuer shall not redeem the Sukuk by any manner otherwise than that as disclosed in the information memorandum or the Investment Agency Agreement or any other contract, as the case may be, without prior approval of their holders by way of special resolution passed in general meeting of the Sukuk holders with two third majority of the Sukuk holders present in such meeting.

(viii) The Sukuk shall not be restructured or rescheduled unless approval of two third of the Sukuk holders in value for the time being outstanding is obtained;

(ix) The issuer, upon request, shall send copy of its annual audited accounts and half-yearly accounts to the Sukuk holders.

(x) The issuer shall not make any material modification in the structure of the Sukuk, profit payment, conversion, redemption etc. without prior written approval of the Shariah Advisor, the Investment Agent and the holders of Sukuk with two third majority.

(xi) The issuer shall designate the company secretary or chief financial officer or any other person having the minimum qualification notified for the position of the company secretary, as compliance officer who:

(a) shall be responsible for ensuring compliance with the regulatory provisions applicable to the Issue and report the same at the meeting of the board of directors of the issuer held subsequently; and

(b) shall directly report to the Commission and the Investment Agent, implementation of various clauses of these Regulations and other directives of the Commission, if any.

(xii) The issuer shall not invest in its own Sukuk.

(xiii) The issuer shall comply with all the laws applicable to the issue of Sukuk.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Name and signature of the chief executive officer of the Issuer duly authorized by its board of director

Place: \_\_\_\_\_

\_\_\_\_\_  
Name and signature of the company secretary or chief financial officer of the Issuer duly authorized by its board of director

\_\_\_\_\_  
Common Seal of the Issuer

**CONTENTS OF TERM SHEET**

The Term Sheet for the issue of Sukuk shall contain at least the following information/disclosures:

- (i) name of the issuer;
- (ii) Issue date;
- (iii) size of the Issue;
- (iv) type of Sukuk;
- (v) mode of Issue i.e offer to Qualified Institutional Buyers through information memorandum under the regulation of the stock exchanges or offer through agreement to persons mentioned in section 66 of the Act and notified thereunder;
- (vi) purpose of the Issue and utilization of the proceeds thereof;
- (vii) salient features of the instrument like its offer price, denomination, tenure, expected rate of return; its structure etc.;
- (viii) in case of secured Sukuk, nature and amount of the security backing the instrument and nature of charge(s) established in favor of the Investment Agent to the Issue;
- (ix) options like put option, call option, conversion option, if any;
- (x) address of the registered office of the issuer;
- (xi) name, postal address, email address, telephone number and fax number of the compliance officer of the issuer;
- (xii) name and contact detail of the Shariah Advisor;
- (xiii) name and address of the registered office of the Investment Agent; and
- (xiv) name and address of the registered office of the Consultant to the Issue, if any.

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F.No.SMD/CIW/Misc./07/2009



**( Bushra Aslam )**  
Secretary to the Commission

