

GOVERNMENT OF PAKISTAN
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Islamabad, the 23rd August, 2017

NOTIFICATION

S.R.O. 838(I)/2017. — In exercise of the powers conferred under section 169 of the Securities Act, 2015 (III of 2015), the Securities and Exchange Commission of Pakistan is pleased to direct that the following amendments shall be made in the Public Offering Regulations, 2017, the same 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, namely:-

In the aforesaid Regulations,-

(1) In regulation 2,-

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

(i) after clause (xvi), the following new clause shall be inserted, namely:-

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

(ii) in clause (xxii), for the word “Ordinance” the word “Companies Act” shall be substituted;

(iii) in clause (xxvi),-

(I) in sub-clause (b) for the expression “Companies Ordinance, 1984 (XLVII of 1984)” the word “Companies Act” shall be substituted;

(II) in sub-clause (i), the word “and” shall be omitted;
and

(III) after sub-clause (i), the following new sub-clause (ia) shall be inserted, namely:-

“A foreign company or any other foreign legal person; and”;

- (iv) in clause (xxvii), the words “Islamic Financial” shall be omitted;
- (v) for clause (xxix), the following shall be substituted, namely:-
“(xxix) “Issuer” in relation to securities, means any person including a company, a Special Purpose Vehicle and a body corporate who has issued or proposes to issue a security and includes an Offeror;”;
- (vi) after sub-clause (xxxii), the following new sub-clause (xxxia) shall be inserted, namely:-
“(xxxia) “Limited Liability Partnership (LLP)” means a partnership registered under the Limited Liability Partnership Act, 2017;” ;
- (vii) sub-clause (xxxvii), shall be omitted;
- (viii) for clause (xlvi) the following shall be substituted namely:-
“(xlvi) “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”;
- (ix) for clause (xlvii) the following shall be substituted , namely:-
“(xlvii) “Shariah Compliant Security” means a security structured on the basis of any of the Shariah concepts;”;
- (x) after clause (xlvii), the following new sub-clause (xlvia) shall be inserted, namely:-
“(xlvia) “Shariah concepts” for the purpose of these Regulations includes Ijarah, Musharakah, Murabahah, Modaraba, Salam and any other concept allowed by the Shariah Advisor;”;
- (xi) for clause (xlviii) the following shall be substituted namely:-

- “(xlviii) “Shariah certificate” for the purpose of these Regulations means a Shariah pronouncement, a fatwa or Shariah opinion signed by Shariah Advisor in such form and manner as notified by the Commission from time to time;
- (xii) for clause (liii) the following shall be substituted, namely:-
“(liii) “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;
- (xiii) in clause (lv), after the words “undivided share” the “,” shall be omitted;
- (b) in sub-regulation (2), for the word, “Ordinance” the words, “Companies Act” shall be substituted;
- (2) In regulation 3, in sub-regulation (3),-
- (a) for the expression “Underwriter, ” appearing for second time, the expression “Underwriter and” shall be substituted;
- (b) the words “and Banker to an Issue” appearing for the second time shall be omitted;
- (c) for the full stop at the end a colon shall be substituted, and thereafter the following proviso shall be inserted, namely:-
“Provided that sub-regulation (3) shall not apply to the extent if the issue or offer of securities is made simultaneously both in domestic and international markets.”;
- (e) in sub-regulation (18),-
- (I) for the expression “section 461 and 462 of the Ordinance” the expression “section 446 and 447 of the Companies Act” shall be substituted; and
- (II) in the proviso for the expression “XIV of the Ordinance” the expression “XII of the Companies Act” shall be substituted;

- (3) In regulation 13,-
- (a) in clause (3), for the full stop at the end of the proviso, a colon shall be substituted and thereafter following proviso shall be inserted, namely:-
“Provided further that this clause shall not apply to a Sovereign Sukuk and a Government Guaranteed Sukuk;”
- (b) in clause (5), after the word, “debt securities” appearing for the first time, the words “including Sukuk and other Shariah compliant securities” shall be inserted;
- (c) in clause (7),-
- (i) in sub-clause (iii), the words “and what additional measures have been taken for the protection of assets of Sukuk issue and protection of rights of Sukuk holders” shall be omitted;
- (ii) in sub-clause (iv), for the words, “associate of the issuer” the words “associated company or associated undertaking of the Issuer” shall be substituted;
- (iii) for sub-clause (v), the following shall be substituted namely:-
“(v) in case of secured Sukuk, the Issuer has arranged appropriate security, in the form acceptable to the Investment Agent:

“Provided that this sub-clause shall not apply to a Sovereign Sukuk and a Government Guaranteed Sukuk;”
- (iv) for sub-clause (vi), the following shall be substituted namely:-
“(vi) The Issuer shall, before the issue of Sukuk, engage Shariah Advisor and obtain in writing from it/him/her Shariah certificate and the Shariah certificate must be signed by Shariah Advisor ascertaining that the basis on which the Sukuk are structured is Shariah compliant;”;

- (v) for sub-clause (vii), the following shall be substituted namely:-
 - “(vii) The Shariah Advisor may not remain engaged throughout the tenor of the Issue, if the Shariah certificate states so and where an Issuer opts to engage Shariah Advisor for a longer period, the term of engagement shall be at the discretion of the Issuer;”;
- (vi) in sub-clause (viii),-
 - (a) for paragraph (a), the following shall be substituted, namely:-
 - “(a) how the structure is free from riba;”;
 - (b) in paragraph (d), for the words “agreements and undertakings” the words “the related agreements and contracts,” shall be substituted;
 - (c) for the proviso, the following shall be substituted, namely:-
 - “Provided that the Issuer shall ensure that all relevant documents, contracts, details, and information required by the Shariah Advisor for understanding of the transactions, concepts, structure and framing or review of the Shariah certificate are provided and adequately explained to the Shariah Advisor;”;
- (vii) sub-clause (ix) shall be omitted;
- (viii) for sub-clause (x), the following shall be substituted namely:-
 - “(x) The Issue shall not embed any swaps, options or other derivatives except in the case of convertible or exchangeable Shariah compliant securities;”;
- (ix) in sub-clause (xi), after the word, “utilized”, the words, “for Shariah compliant purposes and” shall be inserted;

- (x) in sub-clause (xii), for the word “issuer”, the word “Issuer”, shall be substituted and thereafter the words “The compliance of features and Shariah requirements of Sukuk shall be audited on annual basis” shall be omitted;
- (xi) after sub-clause (xii), the following sub-clauses (xiia), (xiib) and (xiic) shall be added namely:-
 - “(xiia) The Shariah Advisor providing the initial Sharah certificate shall state in their Shariah certificate whether or not Shariah Audit of the issued Sukuk is required;
 - (xiib) The compliance of features and Shariah requirements of Sukuk shall be audited on annual basis, where applicable; and
 - (xiic) The Issuer shall appoint its own statutory auditors or another firm of Chartered Accountants to perform Shariah audit;”;
- (xii) for sub-clause (xiii), the following shall be substituted namely:-
 - “(xiii) The Shariah audit report where required shall made part of the annual financial report of the Issuer;”;
- (xiii) for sub-clause (xiv), the following shall be substituted namely:-
 - “(xiv) The external Shariah audit fee where applicable shall be disclosed in the audited financial statements of the Issuer;”;
- (xiv) after sub-clause (xiv) substituted as aforesaid, the following new sub-clauses shall be inserted, namely:-
 - “(xiva) Where a Sukuk is structured using a single Shariah concept, the Sukuk shall preferably be named according to that concept;

- (xivb) in case of rescheduling or restructuring of an Issue, the Issuer shall seek a fresh Shariah certificate from the Shariah Advisor;
- (xivc) the Prospectus 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 and where the Sukuk are not asset backed, the Prospectus 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;
- (xivd) where Sukuk are issued without transferring concerned assets, where applicable, to an SPV, the Issuer shall explain in the Prospectus why the SPV structure has not been used and any potential implications regarding investor protection and Shariah compliance;
- (xive) the Prospectus shall specify fees and expenses pertaining to Shariah compliance, including the fee, if any, paid to the Shariah Advisor;
- (xivf) the Issuer shall furnish the Shariah certificate 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;
- (xivg) The engagement letter or agreement executed with the Shariah Advisor among other things must clearly define the roles and responsibilities of both parties to the agreement, dispute resolution

mechanism and such other clauses as specified by the Commission from time to time;”

(d) after clause (7), the following shall be inserted, namely:-

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;”;

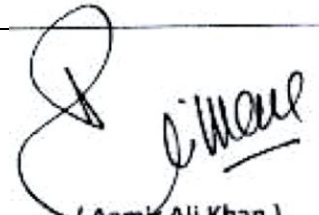
(4) In regulation 15, for the expression, “the first proviso to sub-section (1) of section 86 of the Ordinance” wherever appearing, the expression “clause (b) of sub-section (1) of section 83 of the Companies Act” shall be substituted;

(5) in regulation 16, after clause (ii) the following new clause shall be inserted, namely:-

“(iii) in case of Sukuk and other Shariah compliant securities, ensure that while preparing their financial reports, 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.”; and

- (6) In Sixth Schedule,
- (i) in the heading, for the expression “62-A OF THE COMPANIES ORDINANCE, 1984” the expression “95 OF THE SECURITIES ACT, 2015” shall be substituted; and
 - (ii) in entry number 4, for the expression “proviso to sub-section (1) of Section 86 of the Companies Ordinance, 1984” the expression “clause (b) of sub-section (1) of section 83 of the Companies Act, 2017” shall be substituted.

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



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