

PART-II

Statutory Notifications (S.R.O.)

Government of Pakistan

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

NOTIFICATION

Islamabad, the 6th February, 2015

S.R.O. 112 (I)/2015.— In exercise of the powers conferred by section 506A of the Companies Ordinance, 1984 (XLVII of 1984) read with section 120 thereof and having been previously published in the official Gazette vide Notification No. S.R.O.1223(I)/2012 dated September 28, 2012 as required by sub-section (1) of section 506A of the said Ordinance, 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 “Issue of Sukuk Regulations, 2015”.
 - (2) They shall come into force at once.
 - (3) They shall apply to all Issues of Sukuk by any company, Special Purpose Vehicle or body corporate to the general public or a section of public or to the existing security holders of the issuing company or 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) “Appendix” means appendix to these Regulations;
 - (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 a financial institution appointed by the issuer through execution of investment agency agreement who shall be responsible to facilitate issue and sale of Sukuk under these Regulations and to safeguard interest of the holders of Sukuk;
- (d) “Islamic Banking Institution” means a full-fledged Islamic bank, Islamic banking subsidiaries or Islamic banking branches of conventional banks;
- (e) “Issue” means issuance of the Sukuk through,-
 - (i) initial public offering by an Issuer;
 - (ii) an offer of Sukuk for sale to the public by an Offeror under section 62 of the Ordinance;
 - (iii) an offer to the existing shareholders, Sukuk holders or holders of any other security by an Issuer;
 - (iv) an offer to Qualified Institutional Buyers through private placement; and
 - (v) an offer to persons other than the existing shareholders, Sukuk holders, or holders of any other security.
- (f) “Offering Document” means any document that invites subscription for issue of Sukuk and include a prospectus, information memorandum or a contract through which Sukuk are offered for sale to the prospective investors;
- (g) “Offeror” means a person who directly or indirectly holds more than ten percent Sukuk of a public limited company, a Special Purpose Vehicle or body corporate and offers for sale such Sukuk, in full or in part, to the general public;
- (h) “Ordinance” means the Companies Ordinance, 1984 (XLVII of 1984);
- (i) “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 120 of the Ordinance and notified there under from time to time as persons to whom instruments of redeemable capital including participatory redeemable capital can be issued;
- (j) “Regulations” means the Issue of Sukuk Regulations, 2015;
- (k) “Shariah Advisor” means a Shariah Scholar who is:
 - (i) Shariah advisor of any Islamic banking institution appointed with the approval of the State Bank of Pakistan; or
 - (ii) Shariah advisor of a Takaful company or an Insurance company having Takaful windows registered with the Commission; or
 - (iii) member of the Shariah Board of the State Bank of Pakistan; or

- (iv) associated with the Accounting and Auditing Organization of the Islamic Financial Institutions on its Sharia Standard Board.
- (l) “Shariah Compliant Security” means a security structured on the basis of any of the Shariah concepts;
- (m) “Shariah concepts” for the purpose of these Regulations includes Ijarah, Musharika, Morabiha, Modaraba, Salam and any other concept allowed by the Shariah Advisor;
- (n) “Shariah Pronouncement” for the purpose of these Regulations includes a Shariah opinion by the Shariah Advisor in such form and manner as notified by the Commission from time to time;
- (o) “Shariah Scholar” means a person authorized by a recognized institution to issue Shariah Pronouncement;
- (p) “Special Purpose Vehicle” for the purpose of these Regulations means a public limited company or a body corporate registered with the Commission under the Asset Backed Securitization Rules, 1999.
- (q) “Sukuk” means an instrument of equal value representing investment of the Sukuk holders in the capital of the issuer to the extent of 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 based on characteristics and structures including participatory mode approved by the Shariah Advisor.

(2) Words and expressions used but not defined in these Regulations shall have the same meanings as are assigned to them in the Ordinance, the Securities and Exchange Ordinance, 1969 (XVII of 1969), the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997) and the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980).

CHAPTER II

ELIGIBILITY AND REQUIREMENTS FOR ISSUE OF SUKUK

3. Eligibility for Issue of Sukuk.— (1) Any company, Special Purpose Vehicle or body corporate, hereinafter referred to as the issuer, may issue Sukuk under section 120 of the Ordinance subject to the terms and conditions mentioned therein and in these Regulations.

(2) The issuer shall, before the issue of Sukuk, obtain all necessary approvals from the relevant regulatory authorities, where applicable.

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

- (a) the issuer's rating is not lower than triple B minus (BBB-) and the instrument's rating is not lower than triple B (BBB) assigned by a credit rating company registered with the Commission under the Credit Rating Companies Rules, 1995;
 - (b) it has arranged appropriate security, where required, in the form acceptable to the Investment Agent;
 - (c) it has obtained consent of a depository company to declare the Sukuk as eligible security for the purposes of depository system; and
 - (d) any other condition as may be specified by the Commission.
- (2) All Sukuk to be listed on a stock exchange shall be issued only in book-entry form.
- (3) Where a Sukuk is structured using a single Shariah concept, the Sukuk shall preferably be named according to that concept.
- (4) The issuer shall at all times during the tenure of the issue ensure that its principle business is not against the Shariah principles.
- (5) The issuer shall ensure that proceeds of the Issue are utilized in the form and manner as disclosed in the Offering Document.
- (6) The Issue shall not embed any swaps, options or other derivatives except in the case of convertible or exchangeable Sukuk.
- (7) Where Sukuk are convertible or exchangeable into ordinary shares, the option of conversion or exchange, as the case may be, shall be at the discretion of the investors and the underlying ordinary shares are listed at the time of the offer of such Sukuk.
- (8) Where approval of the Commission is needed for issue, circulation and publication of prospectus, the issuer shall submit the draft prospectus in MSWord format for review and the final prospectus in PDF format for record.

5. Shariah Advisor.— (1) The issuer shall, before the issue of Sukuk, appoint in writing a Shariah Advisor and obtain from it Shariah Pronouncement ascertaining that the basis on which the Sukuk are structured and the principal business of the issuer are in conformity with principles of Shariah.

- (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.
- (3) The appointment letter or agreement shall clearly define the roles and responsibilities of the Shariah Advisor.

(4) The Shariah Advisor shall remain appointed throughout the tenure of the Issue and replacement of the Shariah Advisor shall be reported along with reason to the Commission and all the Sukuk holders within fifteen days of the replacement.

(5) The issuer shall ensure that all related 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 explained to it.

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

6. Underwriting.— (1) Save as provided in sub-regulation (4), the Issue shall be underwritten by at least two underwriters and the underwriters shall not be associated companies or associated undertakings of the issuer.

(2) The issuer, its sponsors and associates shall not enter into any agreement or arrangements directly or indirectly with the underwriters with respect to the purchase of Sukuk taken up by the underwriters to the Issue.

(3) Where the Issue is underwritten, the issuer shall ensure that the underwriting process and the agreements are approved from the Shariah Advisor.

(4) The underwriting may not be required where,-

(a) utilization of the proceeds of the Issue is solely for meeting the working capital requirement;

(b) the issuer has alternative funding arrangements in place for meeting short fall, if any, in the event of under subscription of the Issue; and

(c) the Issue is made through private placement.

(5) Where the Issue is not underwritten in cases referred to in sub-regulation (4), the minimum subscription on which the issuer or the Offeror, as the case may be, proceed further shall be disclosed in the Offering Document.

(6) Unless otherwise allowed in writing by the Commission, where any Issue is under-subscribed and cannot meet the minimum level of subscription disclosed in the Offering Document under sub-regulation (5), the Issue must be aborted and the subscription received, if any, must be refunded to all the subscribers within a period of not more than five working days from the last date for subscription.

7. 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 atleast such clauses as notified by the Commission from time to time.

CHAPTER III

DISCLOSURE AND REPORTING REQUIREMENTS

8. Disclosure requirements for issuance of Sukuk.— (1) Where Sukuk are issued to the general public, the issuer shall prepare a prospectus containing all the information and disclosures as required under the Ordinance, as notified by the Commission from time to time and those required by the Commission at the time of approval of prospectus.

(2) Where Sukuk are issued through private placement, 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**.

(3) 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 may be circulated only to the Qualified Institutional Buyers.

9. 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 the closing of the subscription period for the Issue.

(2) The Sukuk issued by any company, Special Purpose Vehicle or body corporate 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.

10. 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

11. 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 506A of the Ordinance 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

12. 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.

13. Shariah Compliance Audit.— (1) The compliance of features and Shariah requirements of Sukuk shall be audited on annual basis.

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

(3) The Shariah audit report shall made part of the annual financial report of the issuer.

14. Relaxation.— (1) Where the Commission is satisfied that it is not practicable to comply with any requirement of these Regulations in a particular case or class of cases, the Commission may relax such requirement(s) and may impose such condition(s) as it deems fit provided the risk management strategy arranged by the issuer fully safeguards interest of the holders of Sukuk.

(2) The application for seeking relaxation shall accompany a fee for an amount of five hundred thousand rupees per relaxation as application processing fee.

**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.

UNDERTAKING

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 along with key financial ratios. The ratios should at-least include current ratio, return on equity, return on assets, earning per share etc.;
 - (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, 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) copy of the latest credit rating report of the issuer and the instrument;
 - (f) redemption status of the Sukuk on semi-annual basis till it is fully redeemed;
 - (g) status of redemption reserve, if any; and
 - (h) 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 continuously rate the entity and instrument from a credit rating agency registered with the Commission.
- (vi) the issuer shall notify the Commission the expected default in timely payment of profit or principal amount as soon as the same becomes apparent.
- (vii) **the issuer shall induct the Sukuk at Central Depository System of a Depository Company.**
- (viii) 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".
- (ix) the issuer shall not redeem the Sukuk by any manner otherwise than that as disclosed in the Offering Document 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.
- (x) The issuer, upon request, shall send copy of its annual audited accounts and half yearly accounts to the Sukuk holders and the concerned credit rating agency.
- (xi) 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.
- (xii) 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.
- (xiii) The issuer shall not invest in its own Sukuk.
- (xiv) 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 public offer through prospectus; right offer through letter of rights to the existing shareholders, Sukuk holders or holders of any other security of the issuing company; offer to Qualified Institutional Buyers through information memorandum under the regulation of the stock exchanges or offer through agreement to persons mentioned in section 120 of the Ordinance and notified thereunder;
- (vi) purpose of the Issue and utilization of the proceeds thereof;
- (vii) name of the stock exchange where the Sukuk are listed, in case of listed Sukuk;
- (viii) credit rating of the issuer for the last three years, if any, including latest credit rating of the entity and the instrument and name of the credit rating company;
- (ix) salient features of the instrument like its offer price, denomination, tenure, expected rate of return; its structure; listed, unlisted etc.;
- (x) 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;
- (xi) rates of various taxes, duties and zakat applicable on investment in Sukuk;
- (xii) options like put option, call option, conversion option, if any;
- (xiii) address of the registered office of the issuer;
- (xiv) name, postal address, email address, telephone number and fax number of the compliance officer of the issuer;
- (xv) name and contact detail of the Shariah Advisor;
- (xvi) name and address of the registered office of the Investment Agent; and
- (xvii) name and address of the registered office of the Consultant to the Issue, if any.

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

(Bushra Aslam)
Secretary to the Commission