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PART II

Statutory Notifications (S.R.O.)

GOVERNMENT OF PAKISTAN
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

NOTIFICATION

Islamabad, the 23rd December, 2020

S. R. O. 1385(I)/2020.—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 make the following amendments in the Public Offering (Regulated Securities Activities Licensing) Regulations, 2017, the same having been previously published in the official Gazette *vide* S. R. O. Notification, 1229/2020 dated November 18, 2020, as required under sub-section (4) of section 169 of the Securities Act, 2015 for eliciting public opinion, namely:—

In the aforesaid Regulations,—

- (1) in regulation 1, in sub-regulation (3), for the words “and underwriters” the expression “, underwriters and Debt Securities Trustee” shall be substituted;

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- (2) in regulation 2, in sub-regulation (1),—
- (a) for clause (v), the following shall be substituted, namely:—
- (v) “consultant to the issue” means a person licensed by the Commission:
- (i) for undertaking the business of advising any person or undertaking regarding:
- (a) compliance with or in respect of laws or regulatory requirements relating to issue or offer of securities to the public;
- (b) arrangement, reconstruction, mergers, due diligence or take-over of a listed company, subsidiary of a listed company, company undertaking an activity licensed or registered by the Commission and any other regulated financial institution and any of its assets or liabilities;
- (ii) to act as an Investment agent for issuance of debt securities as specified in Structuring of Debt Securities Regulations, 2020;”;
- (b) after clause (v), substituted as aforesaid, the following new clause shall be inserted, namely:—
- “(va) “Debt Securities Trustee” means a person licensed by the Commission under the Act and appointed as Debt securities trustee by an Issuer through execution of Trust deed;” and
- (c) in clause (vii), for the semi colon as the end a colon shall be substituted and thereafter the following new proviso shall be inserted, namely:—
- “Provided that issue in case of debt securities trustee also include private placement of debt securities.”;
- (3) in regulation 3, for the words “and underwriter”, the expression, “, underwriter and debt securities trustee” shall be substituted;

(4) in regulation 7, in sub-regulation (1), after the words “or underwriter” the words “or Debt Securities Trustee” shall be inserted;

(5) in regulation 8,—

(a) in sub-regulation (3), after the words “or underwriter” the words “or Debt Securities Trustee” shall be inserted;

(b) after sub-regulation (4), following new sub-regulation shall be inserted, namely:—

“(4a) A Debt securities trustee whose application for renewal of license is refused by the Commission shall continue to act as such in all previous Issues in which it is acting as Debt securities trustee till the appointment of any other Debt securities trustee by the issuer or complete redemption of such Issues, whichever is earlier:

Provided that the appointment of any other Debt securities trustee should be made within such time period as mentioned in the refusal order but not exceeding 60 days from the date of such refusal.”;

(c) in sub-regulation (5), after the words “or underwriter” the words “or Debt Securities Trustee” shall be inserted;

(6) for regulation 9, following shall be substituted namely,—

“**9. Duties and Functions.**—A banker to an issue, consultant to the issue, Debt Securities Trustee and underwriter shall perform their duties and functions and discharge their obligations as specified in the Public Offering Regulations, 2017; Structuring of Debt Securities Regulations, 2020 and Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Regulations, 2017, as applicable.”;

(7) in regulation 10, for sub-regulation (1), the following shall be substituted, namely:—

“(1) A banker to an issue or consultant to the issue or underwriter or debt securities trustee may voluntarily apply to the Commission for cancellation of its license at least three months prior to the date of expiry of its license.”;

(8) for regulation 12, the following shall be substituted, namely:—

“12. Exemption to financial institutions from licensing requirements in case of Underwriter, banker to an issue and debt securities trustee.—(1) In terms of section 64 of the Act, a development financial institution and scheduled bank shall be exempt from the licensing requirements to act as an underwriter, a banker to an issue and debt securities trustee as given in regulation 5, 6 and 7, subject to the condition that it meets all eligibility criteria given in Schedule-I:

Provided that in case of exemption relating to debt securities trustee, sub-clause (i) and sub-clause (ii) of clause 4 of schedule-I shall not be applicable.

- (2) Any development financial institution and scheduled bank shall obtain approval of the Commission prior to commencing the business as underwriter, a banker to an issue and debt securities trustee and the said development financial institution and scheduled bank shall submit a board resolution authorizing it to undertake the business as an underwriter, a banker to an issue and debt securities trustee. The development financial institution to act as an underwriter and scheduled bank to act as a banker to an issue shall pay a non-refundable fee of Rs. 500,000/-. The scheduled bank to act as underwriter shall pay a non-refundable fee of Rs. 250,000/-.
- (3) In case of debt securities trustee, development financial institution and scheduled bank shall pay non-refundable fee of Rs. 100,000.
- (4) Any development financial institution and scheduled bank while acting as an underwriter, a banker to an issue and debt securities trustee shall remain compliant with all the requirements of these Regulations, Public Offering Regulations 2017 and structuring of debt securities regulations, 2020, where applicable.
- (5) Within one month of the end of each calendar year, every development financial institution and bank engaged in the business of debt securities trustee shall submit an affidavit along with a fee of Rs. 100,000 that its compliant with all the requirements of these regulations.

(6) Any development financial institution and scheduled bank shall become ineligible to act as underwriter, a banker to an issue and debt securities trustee if it is non-compliant with any of the requirements of these Regulations including non-submission of affidavit on annual basis.”

(9) in SCHEDULE-I,—

(a) in the section “General Conditions”,—

(i) in paragraph (i), after the words “or underwriter” the words “or debt securities trustee” shall be inserted;

(ii) in paragraph (iii), after the “Explanation” following proviso shall be inserted namely:—

“Provided that paragraph (iii) shall not apply in case of Debt Securities Trustee.”

(b) in section 2. “Specific Conditions:”, after paragraph (3), the following shall be inserted, namely:—

“(4) Debt Securities Trustee:

(i) it is a wholly owned subsidiary set up by a scheduled bank or a development financial institution or a depository company for carrying out the activities of debt securities trustee;

(ii) it is any other company allowed by the Commission;

(iii) it is authorized by its memorandum of association to act as a Debt securities trustee;

(iv) its equity is not less than fifty million rupees;

(v) its entity credit rating, assigned by a credit rating company licensed by the Commission, is not less than A- (single A minus) and such rating is not more than six months old;

(vi) it has necessary infrastructure for performing efficient and uninterrupted functions as debt securities trustee; and

(vii) its chief executive or any of its executive directors or the senior management officer heading the Debt securities trustee function has at least three years' experience of providing services as a Debt securities trustee or has at least three years' experience of working at the senior management level in any regulated financial services sector.”; and

(10) in SCHEDULE-II, after Sr. No.2, the following shall be added, namely:-

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| 3 | Debt Securities Trustee | Rs. 100,000/- |
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”

(11) in Annexure-I, under heading “3. List of documents to be provided along-with application:”, after paragraph 3.1, the following new clause shall be inserted, namely:—

“3.1a. Copy of memorandum and articles of association.”.

[No. SMD/CIW/Misc./01/2009.]

BILAL RASUL,
Secretary to the Commission.