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S. A. SALAM's
**Complete Company Law
and Procedures**
Volume I

50th Update – December 10, 2023

Please find enclosed 48 updated pages so as to complete and update your copy of the Book. Kindly insert as follows:–

Existing Pages to be removed	Updated Pages to be inserted	Existing Pages to be removed	Updated Pages to be inserted
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Index

(ix)	(ix)
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Part AI – Companies Act

66(7)	66(7), (8)
162(79)	162(79)

Part III – Regulations

iii	iii
485 to 488	485 to 488(1)
793 to 812(4)	793 to 812(4.2)
-	1183 to 1196

Yours sincerely,
Abdul Rab Khan
Manager

Note from the Author

It gives me great pleasure to complete the 50th update of Complete Company Law and Procedures, Volume-I. This update covers:

-SRO's: 1331(I)/2023, 1348(I)/2023, 1356(I)/2023, 1441(I)/2023, 1636(I)/2023, 1666(I)/2023 & 1715(I)/2023.

-SECP's Circulars:

These are briefly explained as follows:–

Part AI – Companies Act

1. On page AI-66(7), **SRO 1331(I)/2023** dated September 18, 2023 has been reproduced. This is re: **Conditions and Requirements for Issuance of further Shares to any person.**
2. On page AI-66(8), **SRO 1636(I)/2023** dated November 14, 2023 has been reproduced. This is re: **Zero Tolerance for Surrogate Companies (betting outfits).**
3. On page AI-162(79), **SRO 1715(I)/2023** dated November 21, 2023 has been reproduced. This is re: This requires that **International Financial Reporting Standard 17** shall be followed in preparation of financial statements of insurance/takaful companies.

Part III – Regulations

4. On page III-486 onwards, **Futures Exchanges (Licensing and Operations) Regulations 2017** have been amended by **SRO 1666(I)/2023** dated November 17, 2023.
5. On page III-793 onwards, **Anti Money Laundering Regulations, 2020** have been amended by **SRO 1356(I)/2023** dated September 21, 2023.
6. On page III-1183 onwards, **SRO 1348(I)/2023** dated September 18, 2023 has been reproduced. This is re: **Acceptable Quantitative Tolerance Levels and other Conditions for Shariah Screening of Securities and Companies.**
7. On page III-1187 onwards, **SRO 1441(I)/2023** dated October 12, 2023 has been reproduced. This is re: **Unlisted Companies (Buy Back of Shares) Regulations, 2023.**

Suggestions, comments etc. for improving the book and updating service will be most valuable.

Sheikh Asif Salam
Chartered Accountant

<u>Description</u>	<u>Page #</u>
Credit and Suretyship (Conduct of Business) Rules, 2018	753
Employees Contributory Fund (Invest. in Listed Securities) Reg., 2018	759
Association with Charitable and Not for Profit Objects Reg., 2018	765
SECP (Anti Money laundering and Countering Financing of Terrorism) Regulations, 2020	793
Futures Brokers (Licensing and Operations) Regulations, 2018	813
Companies (Related Party Transactions and Maintenance of Related Records) Regulations, 2018	857
Foreign Companies Regulations, 2018	863
Shariah Governance Regulations, 2018 (<i>Repealed by SRO 1314(I)/2023</i>)	889
Companies (Further Issue of Shares) Regulations, 2020	919
Listed Companies (Buy-Back of Shares) Regulations, 2019	953
Search and Seizure Rules 2019	975
Collateral Management Companies Regulations 2019	985
Corporate Restructuring Companies Rules, 2019	1011
Panel of Provisional Managers and Official Liquidators Regulations, 2019	1025
Corporate Rehabilitation Regulations, 2019	1033
Secured Transactions Registry Regulations, 2020	1043
Professional Clearing Members Regulations, 2020	1051
Oversight Regulations for Self-Regulatory Bodies of Accountants, 2020	1067
Companies (Maintenance and Audit of Cost Accounts) Regulations, 2020	1070(1)
Securities and Exchange Commission (Reinsurance Brokers) Reg., 2021	1071
Modaraba Regulations, 2021	1093
Issuance of Convertible Debt Securities through Right Offer Regulations, 2022	1143
Shariah Governance Regulations, 2023	1151
Unlisted Companies (Buy-Back of Shares) Regulations, 2023	1187

- b) "Government Debt Securities" means a debt security such as Treasury Bill (T-Bill), Pakistan Investment Bond (PIB), Government of Pakistan (GOP) Ijarah Sukuk and any other debt instrument issued by the Federal Government, Provisional Government, Local Government/Authority, and any other statutory body."

Conditions and Requirements for Issuance of further Shares to any person.-

Following is the text of SRO 1331(I)/2023 dated September 18, 2023:-

"In exercise of powers conferred by Section 510 read with subclause (c) of sub-section (1) of Section 83 of the Companies Act, 2017 (Act No. XIX), the Securities and Exchange Commission of Pakistan, is pleased to notify the following conditions and requirements for issuance of further shares to any person (by way of other than right) either for cash or for consideration other than cash in case of a private company, namely:-

- (i) power to issue shares to any person by way of other than right either for cash or for consideration other than cash is specifically provided in the articles of association;
- (ii) the issue is proposed and approved by the board;
- (iii) the issue of shares to any person by way of other than right offer is subject to approval of the shareholders through special resolution;
- (iv) the proposal by the board referred in clause (ii) above, shall clearly state as follows:
 - (a) quantum of the issue both in terms of the number of shares and percentage of existing paid up capital;
 - (b) issue price per share and justification for the same;
 - (c) consideration against which shares are proposed to be issued i.e. cash or other than cash;
 - (d) name of person(s), their brief profile, existing shareholding, if any, in the company, to whom the shares are proposed to be issued;
 - (e) purpose of the issue;
 - (f) justification for issue of the shares by way of other than right;
 - (g) benefits of the issue to the company and its members, if any;
 - (h) consent of the person(s) to whom the shares are to be issued is(are) obtained;
 - (i) the company is compliant with the requirements of the Companies Act, 2017 and rules and regulations made thereunder;
 - (j) the proposed new shares shall rank pari passu in all respects with the existing ordinary shares of the company. In case, the proposed new shares are different from the issued ordinary shares in any respect, then the board's decision must state the differences in detail;
 - (k) where shares are proposed to be issued for consideration other than in cash, the value of non-cash assets or services or intangible assets shall be determined by a valuer:

Provided that the valuation shall not be older than six months from the date of passing of special resolution and the valuer must be registered as per the requirements of the Companies (Further Issue of Shares) Regulations, 2020.

- (v) The notice of general meeting for approval of members through special resolution shall contain material information/facts as provided in para (iv) above in addition to other matters contained under sub-section (3) of Section 134 of the Companies Act, 2017 along with copy of latest audited financial statements:

Provided that in case first annual general meeting is not due or the last audited financial statements are older than six months from the date of special resolution or the company is not required to get its financial statements audited under proviso to sub-section (5) of Section 223 of the Companies Act, 2017, the company shall prepare and attach interim unaudited financial statements.

- (vi) The company shall ensure to issue shares within sixty days from the date of passing of special resolution or within an extended period of time of thirty days with the approval of the Board.”

Zero Tolerance for Surrogate Companies (betting outfits).- Following is the text of SRO 1636(I)2023 dated November 14, 2023:-

“WHEREAS, the Ministry of Information and Broadcasting through its letter number M/o I&B U.O No. 1(1)/2023/press/Misc., titled as “**Zero Tolerance for Surrogate Companies**”, dated September 25, 2023 has informed that some betting outfits labelled as Surrogate companies have entered the Pakistani market by entering into sponsorship and advertisement contracts with a number of media and sport enterprises and advised to not to make any agreements or enter into business relationship with these surrogate companies. The relevant portion of above letter is reproduced below for ease of reference:

“... ..

These are originally gambling, betting and casino companies. Such operations are mostly run from some" hostile countries with the motive to destroy the moral fabric of Pakistan, to introduce corruption in Pakistan team and to put Pakistan into further economic turmoil through moving untaxed money out of the country in dollars. Many advertisements of such betting surrogate companies are being run on digital, electronic, social and print media in Pakistan

It is critical to stop all such surrogate betting companies from operating in Pakistan. Therefore, Pakistan Cricket Board, Pakistan Super League, PSL franchises, club cricket, private leagues, television channels, radio broadcasters, internet platforms, newspapers, magazines and other media/ advertisement platforms are strictly advised to not make any agreements and business relations with such surrogate companies and to not promote them through any kind of advertisement. Moreover, it is advised to immediately terminate all existing agreements with such surrogate companies.”

NOW THEREFORE, the Securities and Exchange Commission of Pakistan, in exercise of Powers under Section 40B of the SECP Act, 1997 hereby directs all Companies and Limited Liability Partnerships (LLPs) to ensure compliance with the aforementioned advisory of Ministry of Information and Broadcasting in true letter and spirit.”

Electronic Transmission of Annual and Quarterly Financial Statements of Listed Companies to the Commission and Registrar of Companies.- Following is the text of SECP's Circular No. 11 of 2023 dated August 11, 2023:-

“The Securities and Exchange Commission of Pakistan (the “SECP”) in exercise of the powers conferred under Section 510 of the Companies Act, 2017 (the “Act”) read with Section 458A of the Act i.e. Measures for greater ease of doing business and in supersession of Circular 24 of 2017 dated October 19, 2017, hereby directs the listed companies to file annual and quarterly financial statements together with the reports as required to be submitted under the applicable provision of the Act, through eService of SECP within the stipulated time under the Act.

2. The said filing shall be considered as compliance of the provisions of Sub-section (7) of Section 223 and Sub-section (2) of Section 237 of the Act with respect to dispatch / transmission of the financial statements to the Commission and Registrar.”

International Financial Reporting Standard 17 shall be followed in preparation of financial statements of insurance/takaful companies.- Following is the text of SRO 1715(I)/2023 dated November 21, 2023:-

“In exercise of the powers conferred by section 510, read with sub-section (1) of section 225 of the Companies Act, 2017 (Act No. XIX of 2017), the Securities and Exchange Commission of Pakistan is pleased to direct that the International Financial Reporting Standard 17, issued by the International Accounting Standards Board, regarding the accounts and preparation of statement of financial position, profit and loss accounts and other relevant statements and disclosures shall be followed for the period commencing from 1st January 2026 of companies engaged in insurance/takaful and re-insurance/re-takaful business:

Provided that the Commission may, of its own motion or upon an application made to it, grant exemption to any company or any class of companies, it is in the public interest so to do, from compliance with all or any of the requirements of the aforesaid Standard.”

<u>Description</u>	<u>Page #</u>
Professional Clearing Members Regulations, 2020	1051
Oversight Regulations for Self-Regulatory Bodies of Accountants, 2020	1067
Companies (Maintenance and Audit of Cost Accounts) Regulations, 2020	1070(1)
Securities and Exchange Commission (Reinsurance Brokers) Reg., 2021	1071
Modaraba Regulations, 2021	1093
Issuance of Convertible Debt Securities through Right Offer Regulations, 2022	1143
Shariah Governance Regulations, 2023	1151
Unlisted Companies (Buy-Back of Shares) Regulations, 2023	1187

- (n) form sub-committee, where required, to perform any of its functions in accordance with the applicable regulatory framework; and
- (o) carry out any other function that may be mutually agreed upon by the regulatory affairs committee and the board of directors of the futures exchange or as may be assigned by the Commission.

16. Manner of outsourcing important functions.- (1) A futures exchange shall not outsource any of its functions without prior written approval of the Commission.

(2) The board of directors of a futures exchange shall be responsible for formulation and approval of outsourcing policy describing activities or the nature of activities that can be outsourced, the authorities who can approve outsourcing of such activities, and the selection criteria of third party to whom it can be outsourced.

(3) The records relating to all activities outsourced shall be preserved centrally by the futures exchange so that the same is readily accessible for review by the board of directors, the Commission or any other authorized person.

(4) The futures exchange shall be fully liable and accountable for the activities that are being outsourced to the same extent as if the service were provided in-house. The facilities, premises or data involved in carrying out the outsourced activity by the service provider shall be deemed to be those of the futures exchange.

(5) The futures exchange shall be fully liable and must take appropriate steps to require that third parties protect confidential information of both the futures exchange, its customers and other parties involved from intentional or inadvertent disclosure to unauthorized persons.

(6) The futures exchange desirous of outsourcing its activities shall not, however, outsource its core business activities including risk and compliance functions.

17. Obligations pertaining to Audit and Accounts.- The obligations and duties of a futures exchange under these regulations with respect to audit and accounts are in addition to the requirements of the Ordinance, the rules and regulations made thereunder and any directives issued thereunder.

18. Maintenance of accounting and other records.- (1) A futures exchange shall keep accounting and other records which shall sufficiently explain its business and transactions entered into and shall be such as to,-

- (a) disclose with accuracy the financial position at that time;
- (b) enable the futures exchange to prepare financial statements at any time and which comply with the requirements of law;
- (c) demonstrate whether the futures exchange is maintaining adequate financial resources to meet its business commitments;
- (d) demonstrate capacity of the futures exchange with respect to its duties, functions and operations under the Act and these regulations; and
- (e) demonstrate its preparedness to manage any risk arising out of its duties, functions and operations.

(2) The futures exchange shall ensure that all requirements with respect to accounting and audit under these regulations are updated in a timely manner.

(3) The futures exchange shall ensure that information which is required to be recorded under the Act and these regulations shall be recorded in such a way as to enable a particular transaction to be identified at anytime and traced from initiation to conclusion.

(4) All records required to be maintained under the Act and these regulations shall be properly arranged and filed so as to permit prompt access to any particular record.

(5) The futures exchange shall preserve the records required under these regulations for a period of ten years from the date on which they are made and should seek clearance from the Commission before destruction of any of its records.

19. Appointment of auditor and related matters.- (1) A futures exchange shall ensure that it has appointed an auditor ¹[from the list of approved auditors to conduct audit of a futures exchange as notified by the Commission,] who inter-alia has the powers and duties prescribed under sub-regulation 3 and,-

- (a) those powers and duties are set out in an engagement letter;
- (b) the engagement letter is signed by the futures exchange and the auditor; and
- (c) the futures exchange retains a copy of the engagement letter.

(2) A futures exchange shall, within seven days, give written notice to the Commission of the appointment, removal or resignation of an auditor.

(3) The auditor appointed by a futures exchange shall have a right to,-

- (a) access its accounting and other records and all other documents relating to its business including the documents required to be maintained under the Act and these regulations; and
- (b) require from it such information and explanations as the auditor considers necessary for the performance of duties.

(4) in preparing an auditor's report of a futures exchange, the auditor shall carry out such relevant audit procedures as will enable him to form an opinion as to the matters required to be stated in the audit report.

²[]

(6) Where an auditor resigns or is removed by the futures exchange, a notice to that effect shall be sent to the Commission containing a statement signed by the auditor to the effect that there are no circumstances connected with his resignation or removal which the auditor considers should be brought to the attention of the Commission.

¹Words inserted by SRO 414(I)/2023 dated March 29, 2023.

²Sub-regulation (5) deleted by SRO 1666(I)/2023 dated November 17, 2023. Before Omission it read as follows:-

“(5) The auditor's report shall state all the matters as are required to be stated in accordance with the requirements of the Ordinance and additionally must state whether in the opinion of the auditor,

- (a) and adequate internal control system commensurate with the size and nature of services performed by the futures exchange was implemented during the period; and
- (b) the regulatory function had appropriate resources including the human resource and had implemented effective procedures and reporting mechanism which can be reasonably expected to detect and report any non-compliance in a timely manner.”

(7) A futures exchange shall undergo a mandatory annual audit of its operations, regulatory functions, IT systems and any other systems or functions as specified by the Commission from time to time.

(8) For the purposes of the audit specified in (7) above, the futures exchange shall, ¹[appoint an auditor enlisted within Category "A" of the State Bank of Pakistan's Panel of Auditors for a period of three years] auditor with relevant expertise who shall conduct such audit in accordance with the terms of reference specified in Annexure III.

²[(8A) For the purposes of audit specified in sub-regulation (7) above, a future exchange shall, at the minimum, rotate the auditor after every five years.]

(9) The Commission may appoint an auditor to carry out a special audit of the futures exchange at the expense of the futures exchange, in respect of all or any specific matter as specified in Annexure III or any matter specified by the Commission at the time of appointment of the auditor. The audit shall be carried out for such period as the Commission may direct at the time of appointing the auditor.

20. Submission of annual report.- (1) A futures exchange shall submit an annual report to the Commission within four months of the close of financial year, inter alia containing the following information in addition to the requirements of section 20 of the Act;

- (a) audited financial statements containing information as required under the Act and these regulations;
- (b) report of directors to shareholders;
- (c) names and brief profiles of members of the board of directors and senior management officers;
- (d) statement of compliance with the code of corporate governance;
- (e) month-wise trade volume and value in each market segment;
- (f) total number of TRE certificate holders/futures brokers, along-with information with respect to addition or reduction during the period;
- (g) total number of commodity futures, along-with information with respect to addition or reduction during the period;
- (h) names of TRE certificate holders/futures brokers defaulted during the year along with nature and amount of default and subsequent action(s) taken by the futures exchange;
- (i) summary of customer compensation/investor protection fund status showing opening balance, contributions made and amounts utilized during the period and closing balance;
- (j) details of disciplinary actions taken, fines and penalties imposed and recovered;
- (k) pattern of shareholding; and
- (l) any other information that may be deemed material by the futures exchange for disclosure in the annual report.

(2) In addition to the submission of annual report to the Commission, the futures exchange shall also place the annual report on its official website no later than one week from the date of its publication.

¹Substituted for "with prior approval of the Commission, appoint an" by SRO 1913(I)/2022 dated October 14, 2022.

²Sub-regulation (8A) inserted by SRO 414(I)/2023 dated March 29, 2023.

21. Submission of information and returns.- (1) The futures exchange, with approval of its board of directors, shall submit to the Commission, within two months of the close of its financial year, a yearly performance report of the futures exchange against the approved targets and plans, highlighting, in particular, performance of the board of directors, chief executive officer and chief regulatory officer of the futures exchange.

(2) The Commission may by written notice require a futures exchange to submit to the Commission such periodic returns as it may direct.

(3) In addition to any periodic returns required under sub-regulation (1) and (2), the Commission may by written notice require a futures exchange, either generally or in a particular case or class of cases, to submit to the Commission such other information or exceptional returns as it may direct.

¹22. Obligations pertaining to handling of money and assets of futures brokers and their customers.- The futures exchange shall,-

- ²[(i) open and maintain one or more designated bank accounts with scheduled bank(s) in Pakistan, for deposit of money belonging to futures brokers and their customers and the money shall either be deposited in the designated bank account or be invested in Treasury Bills or Sukuks with original maturities of 1 year or less, issued by the Government of Pakistan, in such forms and manner as may be specified by the futures exchange;]
- (ii) not use assets belonging to futures brokers and their customers for any purpose other than as allowed under the Act or any rules or regulations made thereunder;
- (iii) ensure that the assets belonging to futures broker or their customers shall not form part of the assets of the futures exchange for any purpose;
- ²[(iv) keep records of all amounts deposited into and paid from the designated bank account(s), invested in and divested from the Treasury Bills or the Sukuks in terms of clause (i), along with record of return/profit on such amounts;]
- (v) maintain record of balances of each futures broker and customer, stating name and the amount held or received for that futures broker or customer;

¹Regulation 22 inserted by SRO 1913(I)/2022 dated October 14, 2022.

²Regulation 22(i) & (iv) substituted by SRO 1666(I)/2023 dated November 17, 2023. Before substitution these read as follows:-

- “(i) open one or more designated bank accounts with a scheduled bank in Pakistan for deposit of money belonging to futures brokers and their customers in such form and manner as may be specified by the futures exchange from time to time;”
- “(iv) keep records of all amounts deposited into and paid from the designated bank account(s) on behalf of each futures broker and customer;”

III - 488(1)

Pt. III, Rules & Regulations

Futures Exchanges Regulations, 2017

- ¹(vi) if funds of futures brokers or their customers are held in a profit-bearing bank account or invested in terms of clause (i), pass on profit earned on these funds to the futures brokers and their customers in proportion to their balances unless specified otherwise in writing by the futures broker or customer, after making contribution to the settlement guarantee fund at the rate approved by the Commission and deducting a service fee at a rate not exceeding the rate approved by the Commission:

Provided that before deducting the service fee, the futures exchange currently utilizing any portion of profits on funds of futures brokers or their customers for any other purpose other than permitted under this Regulation shall gradually phase-out utilization of such an amount in equal proportion till June 30, 2025 with an option of earlier phase-out.]

¹Regulation 22(vi) substituted by SRO 1666(I)/2023 dated November 17, 2023. Before substitution it read as follows:-

- “(vi) if unutilized funds of futures broker or their customers are held in a profit-bearing bank account, pass on profit earned on these funds to the futures broker and their customers in proportion to their unutilized balance unless specified otherwise in writing by the futures broker or customer, after making contribution to the settlement guarantee fund at the rate approved by the Commission and deducting a service fee at the maximum rate approved by the Commission:

Provided that before deducting the service fee, the futures exchange currently utilizing any portion of profits on unutilized funds of futures brokers or their customers for any other purpose other than permitted under this Regulation shall gradually phase-out utilization of such an amount in equal proportion till June 30, 2025.”

(Forms & Annexure not reproduced here due to sake of brevity)

SECP
(Anti Money Laundering Combating the Financing of
Terrorism and Countering Proliferation Financing)
Regulations, 2020

S.R.O. 921(I)/2020 dated September 28, 2020.- In exercise of the powers conferred by section 6A of the Anti Money Laundering Act, 2010 (VII of 2010), the Securities and Exchange Commission of Pakistan, is pleased to make the following regulations, namely:-

Chapter I
Preliminary

1. Short title and commencement.- These regulations shall be called the Securities and Exchange Commission of Pakistan (Anti Money Laundering ¹[Combating the Financing of Terrorism and Countering Proliferation Financing]) Regulations, 2020.

2. They shall come into force at once.

3. Definitions.- (1) In these regulations, unless there is anything repugnant in the subject or context,-

- (a) "AML Act" means Anti Money Laundering Act, 2010 (VII of 2010);
- (b) "Act" means Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);
- (c) "administered legislation" shall have the same meaning as assigned to it in clause (aa) of sub-section (1) of section 2 of the Act;
- (d) "AML/CFT/CPF" means Anti-Money Laundering, ²[Combating the Financing of Terrorism] ³[and Countering Proliferation Financing];
- (e) "Annex" means annexures appended to these regulations;
- (f) "beneficiary" for the purposes of these regulation shall include-
 - (i) a natural or legal person or arrangement who are entitled to the benefit of any trust arrangement.
 - (ii) in the context of life insurance or takaful, life-contingent annuity contracts or another investment linked insurance or takaful policy, is a natural or legal person, or a legal arrangement, or category of persons, who will be paid the policy proceeds when or if an event occurs, which is covered by the policy;
- ⁴[(fa) "Court appointed Manager" means a person appointed by the competent court to operate the account of a mentally disordered person under the applicable laws on mental health];

¹Substituted for "and Countering the Financing of Terrorism" by SRO 1356(I)/2023 dated September 21, 2023.

²Substituted for "AML/CFT" by SRO 1356(I)/2023 dated September 21, 2023.

³Words inserted by SRO 1356(I)/2023 dated September 21, 2023.

⁴Inserted by SRO 1356(I)/2023 dated September 21, 2023.

- (g) “close associate” of a PEP means-
- (i) an individual known to have joint beneficial ownership of a legal person or a legal arrangement or any other close business relations with a PEP;
 - (ii) any individual(s) who have beneficial ownership of a legal person or a legal arrangement which is known to have been set up for the benefit of a PEP;
 - (iii) an individual who is reasonably known to be closely connected with the PEP for any other reason, including socially or professionally.
- (h) “Commission” means Securities and Exchange Commission of Pakistan established under section 3 of the Act;
- (i) “correspondent relationship” means a relationship between the regulated person (Correspondent), or any party acting on its behalf and processing orders on behalf of the regulated person, and an intermediary (Respondent) which is regulated and supervised by a supervisory authority, transmitting orders on behalf of its underlying customers;
- (j) “customer” means any natural person, legal person or legal arrangement to whom financial services have been extended by a regulated person;
- ¹[(ja) “Designated Person (DP)” means an individual or entity designated under The United Nations (Security Council) Act, 1948 (ACT XIV of 1948)];
- (k) “dormant or in-operative account” means the account in which no transaction or activity or financial service has been extended by the regulated person from last ²[three] years;
- (l) “enhanced due diligence” or “EDD” means taking additional CDD and may include the information set out in section 21(2).
- (m) “family member” of a politically exposed person includes-
- (i) a spouse of the PEP;
 - (ii) lineal ascendants and descendants and siblings of the PEP.
- (n) “Insurer” shall have the same meaning as assigned to it in the Insurance Ordinance, 2000 (XXXIX of 2000);
- (o) “ML” means money laundering
- (p) “Non-Banking Finance Companies” or “NBFCs” shall have the same meaning as assigned to it in Part VIII A of the Companies Ordinance, 1984 (XLVII of 1984);
- ³[(pa) “Person with Mental Disorder” means a person with mental illness as defined in the applicable laws on mental health];

¹Inserted by SRO 1356(I)/2023 dated September 21, 2023.

²Substituted for “five” by SRO 1356(I)/2023 dated September 21, 2023.

³Inserted by SRO 1356(I)/2023 dated September 21, 2023.

- ¹[(pb) “Proliferation Financing” means the financing of proliferation of weapons of mass destruction];
- (q) “Politically exposed persons” or “PEPs” means an individual who is or has been entrusted with a prominent public function either domestically or by a foreign country, or in an international organization and includes but not limited to:
- (i) for foreign PEPs, Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state-owned corporations and political party officials;
 - (ii) for domestic PEPs, Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state-owned corporations, political party officials;
 - (iii) for international organization PEPs, members of senior management or individuals who have been entrusted with equivalent functions.

Provided that middle ranking or more junior individuals in the above referred categories are not included in the definition of PEPs;

- ¹[(qa) “Proscribed Person” means an individual or entity proscribed under the Anti-Terrorism Act, 1997 (ACT NO. XXVII OF 1997)];
- (r) “regulated person” means securities brokers, futures brokers, Insurers, Takaful Operators, NBFCs and Modarabas regulated by SECP under the administered legislation;
- (s) ‘reasonable measures’ means appropriate measures which are commensurate with the money laundering or terrorist financing risks;
- (t) “senior management” means an officer or employee of the reporting entity with sufficient knowledge of the reporting entity’s risk exposure, and of sufficient authority, to take decisions affecting its risk management and mitigation, including chief executive officer/ managing director, deputy managing director, chief operating officer, company secretary, chief financial officer, chief compliance officer and chief regulatory officer and any holder of such positions by whatever name called; and
- (u) “simplified due diligence” or “SDD” means taking reduced CDD measures and may include the measures set out in ²[regulation] 23(3).
- (v) “TF” means financing of terrorism
- (w) “Third Party” means any reporting entity or as may be notified by the Commission.

(2) The definitions in the AML Act shall also apply to these Regulations. The words and expressions used in these regulations but not defined shall have the same meaning as assigned to them under the Act and administered legislation thereunder.

¹Inserted by SRO 1356(I)/2023 dated September 21, 2023.

²Substituted for “section” by SRO 1356(I)/2023 dated September 21, 2023.

Chapter II

Risk Assessment and Mitigation

4. Risk Assessment.- The regulated person shall take appropriate steps in accordance with section 7F of the AML Act to identify, assess and understand its money laundering, and terrorism financing risks for customers, countries or geographic areas and products, services, transactions or delivery channels. The regulated person shall:

- (a) document their risk assessments;
- (b) consider all the relevant risk factors before determining what is the level of overall risk and the appropriate level and type of mitigation to be applied;
- (c) keep their risk assessments up to date;
- (d) categorize its own overall entity level risk as high, medium or low based on the result of risk assessment; and
- (e) have appropriate mechanisms to provide risk assessment information to the Commission.

5. Risk Mitigation and Applying Risk Based Approach.- The regulated person shall: (a) have policies, controls and procedures, which are approved by its board of directors, to enable them to manage and mitigate the risks that have been identified in its own risk assessment and any other risk assessment publicly available or provided by the Commission;

- (b) monitor the implementation of those policies, controls and procedures and to enhance them if necessary; and
- (c) take enhanced measures to manage and mitigate the risks where higher risks are identified.

Explanation:- For the purposes of this regulation the expression “risk based approach” means applying measures to manage and mitigate money laundering and terrorist financing risks that are commensurate with the risks identified.

6. The regulated person may take simplified measures to manage and mitigate risks, if lower risks have been identified. Simplified measures should not be permitted whenever there is a suspicion of ML/TF.

7. New Products, Practices and Technologies.- The regulated person shall:

- (a) identify and assess the ML and TF risk that may arise in the development of new products, businesses and practices, including new delivery mechanism, and the use of new and pre-existent technology.
- (b) prior to the launch or use of product, practice or technology, shall undertake the risk assessment and take appropriate measures to manage and mitigate the risks.

CUSTOMER DUE DILIGENCE (CDD) AND BENEFICIAL OWNERSHIP

8. Customer Due Diligence.- (1) The regulated person shall conduct CDD in the circumstances and matters set out in section 7A(I) and 7(E) of the AML Act.

(2) For the purposes of conducting CDD as required under section 7A (2) of the AML Act every regulated person shall comply with ¹[regulations] 9-25 of these Regulations.

(3) The regulated person shall categorize each customer's risk depending upon the outcome of the CDD process.

9. The regulated person shall:

- (a) identify the customer; and
- (b) verify the identity of that customer using reliable and independent documents, data and information as set out in Annex 1.

10. Where the customer is represented by an authorized agent or representative, the regulated person shall:

- (a) identify every person who acts on behalf of the customer,
- (b) verify the identity of that person in using reliable and independent documents, data and information as set out in Annex 1; and
- (c) verify the authority of that person to act on behalf of the customer.

11. The regulated person shall also identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner by using reliable and independent document, data or sources of information as set out in Annex 1, such that the regulated person is satisfied that it knows who the beneficial owner is.

12. (1) For customers that are legal persons or legal arrangements, the regulated person shall identify the customer and verify its identity by obtaining the following information in addition to the information required in Annex 1:

- (a) name, legal form and proof of existence;
- (b) the powers that regulate and bind the legal person or arrangement, as well as the names of the relevant persons having a senior management position in the legal person or arrangement; and
- (c) the address of the registered office and, if different, a principal place of business.

(2) For customers that are legal persons or legal arrangements, the financial institution should be required to understand the nature of the customer's business and its ownership and control structure.

13. (1) For customers that are legal persons, the regulated person shall identify and take reasonable measures to verify the identity of beneficial owners by:

- (a) identifying the natural person(s) (if any) who ultimately has a controlling ownership interest (as defined under relevant laws) in a legal person; and

¹Substituted for "sections" by SRO 1356(I)/2023 dated September 21, 2023.

- (b) to the extent that there is doubt under (a) as to whether the person(s) with the controlling ownership interest is the beneficial owner(s) or where no natural person exerts control through ownership interests, the identity of the natural person(s) (if any) exercising control of the legal person or arrangement through other means; and
 - (c) where no natural person is identified under (a) or (b) above, the identity of the relevant natural person who holds the position of senior managing official.
14. For customers that are legal arrangements, the regulated person shall identify and take reasonable measures to verify the identity of beneficial owners as follows:
- (a) for trusts, the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust (including through a chain of control/ownership);
 - (b) for waqfs and other types of legal arrangements, the identity of persons in equivalent or similar positions as specified in (a).
 - (c) Where any of the persons specified in (a) or (b) is a legal person or arrangement, the identity of the beneficial owner of that legal person or arrangement shall be identified.
15. An insurer or takaful operator shall:
- (1) At the time at which the beneficiary of the life insurance policy or takaful is identified or designated:
 - (a) if the beneficiary is a specifically named natural person, legal person or legal arrangement, obtain the full name of the beneficiary;
 - (b) if the beneficiary is designated by characteristics, class or other means and is known to the regulated person, obtain sufficient information concerning the beneficiary to satisfy itself that it will be able to establish the identity of the beneficiary at the time of payout.
 - (2) for both the above cases, verify the identity of the beneficiary at the time of payout.
16. The regulated person should verify the ¹[identify of] the customer and beneficial owner before establishing a business relationship or during the course of establishing a business relationship.
17. (1) The regulated person may complete verification of a customer or beneficial owner's identity after the establishment of the business relationship, provided that-
- (a) this occurs as soon as reasonably practicable;
 - (b) this is essential not to interrupt the normal conduct of business; and
 - (c) the ML/TF risks are low.

¹Substituted for "identify" by SRO 1356(I)/2023 dated September 21, 2023.

(2) The types of circumstances where the regulated person permits completion of verification after the establishment of the business relationship should be recorded in the CDD policies.

18. The regulated person shall adopt risk management procedures concerning the conditions under which a customer may utilize the business relationship prior to verification.

19. Ongoing Monitoring.- (1) The regulated person shall conduct ongoing due diligence on the business relationship, including:

- (a) scrutinizing transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the regulated person's knowledge of the customer, their business and risk profile, including where necessary, the source of funds;
- (b) obtaining information and examining, as far as possible, the background and purpose of all complex and unusual transactions which have no apparent economic or visible lawful purpose. The background and purpose of these transactions shall be inquired and findings shall be documented with a view of making this information available to the relevant competent authorities when required.
- (c) undertaking reviews of existing records and ensuring that documents, data or information collected for the CDD purposes is kept up-to-date and relevant, particularly for higher risk categories of customers.

(2) In relation to sub-regulation (b), customers' profiles should be revised keeping in view the CDD and basis of revision shall be documented.

¹[(3) The regulated person shall implement the measures as set out in 7D [(Inability to complete CDD and tipping off)] of the AML Act.

(4) The regulated person shall comply with the provisions of the AML Act and rules, regulations and directives issued thereunder for reporting suspicious transactions/currency transactions in the context of money laundering or financing of terrorism.

(5) Where regulated person files an STR with respect to a customer with whom it has an existing business relationship, and if the regulated person considers it appropriate to retain the customer, then the regulated person shall:-

- (a) substantiate and document the reasons for retaining the customer; and
- (b) subject the business relationship to proportionate risk mitigation measures, including enhanced ongoing monitoring.

(6) The basis of deciding whether an STR is being filed or not shall be documented and kept on record together with all internal findings and analysis done in relation to a suspicion irrespective of the fact that transaction is subsequently reported or not.

¹Regulation 19(3) substituted by SRO 1356(I)/2023 dated September 21, 2023. Before substitution it read as follows:-

“(3) The regulated person shall implement the measures as set out in 7D of the AML Act.”

20. Existing Customers.— (1) The regulated person is required to apply CDD requirement to its existing customers on the basis of materiality and risk and should conduct due diligence on existing relations at appropriate times, taking into account whether and when CDD measures have previously been undertaken and the adequacy of data obtained.

(2) For existing customers who opened accounts with old NICs, the regulated person shall ensure that attested copies of identity documents shall be present in the regulated person record. The regulated person shall block accounts without identity document (after serving one-month prior notice) for all withdrawals, until the subject regulatory requirement is fulfilled. However, upon submission of attested copy of identity document and verification of the same from NADRA or biometric verification, the block from the accounts shall be removed.

(3) For customers whose accounts are dormant or in-operative, withdrawals shall not be allowed until the account is activated on the request of the customer. For activation, the regulated person shall conduct NADRA Verisys or biometric verification of the customer and obtain attested copy of customer's valid identity document (if already not available) and fulfill the regulatory requirements.

21. Enhanced Due Diligence (EDD).— (1) Regulated person shall implement appropriate internal risk management systems, policies, procedures and controls to determine if any customer presents high risk of ML/TF. The regulated person shall apply EDD where a customer presents high risk of ML/TF including but not limited to the following circumstances:

- (a) business relationships and transactions with natural and legal persons when the ML/TF risks are higher;
- (b) business relationships and transactions with natural and legal persons from countries for which this is called for by the FATF;
- (c) PEPs and their close associates and family members.

(2) EDD measures include but shall not be limited to the following measures:

- (a) Obtaining additional information on the customer (e.g. volume of assets, information available through public databases, internet, etc.), and updating more regularly the identification data of customer and beneficial owner;
- (b) Obtaining additional information on the intended nature of the business relationship;
- (c) Obtaining information on the source of funds or source of wealth of the customer;
- (d) Obtaining information on the reasons for intended or performed transactions.
- (e) Obtaining the approval of senior management to commence or continue the business relationship;

- (f) Conducting enhanced monitoring of the business relationship, by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination.

(3) An insurer/ takaful operator shall include the beneficiary of a life insurance policy as a relevant risk factor in determining whether EDD measures are applicable under ¹[sub-regulation] (1), where an insurer/ takaful operator determines that a beneficiary who is a legal person or a legal arrangement presents a higher risk, it shall take EDD measures and take reasonable measures to identify and verify the identity of a beneficial owners of the beneficiary of a life insurance policy or takaful at the time of payout.

(4) In relation to 21(1)(c), the regulated person shall implement appropriate internal risk management systems, to determine if a customer or a beneficial owner is a PEP or a close associate or family member of a PEP, both prior to establishing a business relationship or conducting a transaction, and periodically throughout the course of business relationship. The regulated person shall apply, at minimum the following EDD measures:

- (a) obtain approval from senior management to establish or continue a business relationship where the customer or a beneficial owner is a PEP, close associate or family member of a PEP or subsequently becomes a PEP, close associate and family member of a PEP;
- (b) take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as a PEP, close associate or family member of a PEP; and
- (c) conduct enhanced ongoing monitoring of business relations with the customer or beneficial owner identified as a PEP, close associate and family member of a PEP.

(5) An insurer/ takaful operator shall take reasonable measures at the time of payout of a life insurance policy to determine whether the beneficiaries and/or, where applicable, the beneficial owner of the beneficiary are politically exposed persons.

(6) Where higher risks are identified under ¹[sub-regulation] (5), an insurer or takaful operator must inform senior management before the payout of the policy proceeds, to conduct enhanced scrutiny of the whole business relationship with the policyholder, and to consider making a suspicious transaction report.

22. Counter Measures against high risk countries.— Regulated persons shall apply the countermeasures including but not limited to, enhance due diligence proportionate to the risk as indicated by the Federal Government, pursuant to recommendations by the National Executive Committee and when called upon to do so by the FATF.

¹Substituted for “subsection” by SRO 1356(I)/2023 dated September 21, 2023.

23. Simplified Due Diligence.- (1) The regulated person may apply SDD only where low risk is identified through adequate analysis through its own risk assessment and any other risk assessment publicly available or provided by the Commission in accordance with ¹[regulation] 6 of these regulations and commensurate with the lower risk factors.

(2) The decision to rate a customer as low risk shall be justified in writing by the regulated person.

(3) SDD measures include the following measures:

- (a) Verifying the identity of the customer and the beneficial owner after the establishment of the business relationship;
- (b) Reducing the degree of on-going monitoring and scrutinizing transactions, based on a reasonable monetary threshold as prescribed or as set out by the Commission;
- (c) Not collecting specific information or carrying out specific measures to understand the purpose and intended nature of the business relationship, but inferring the purpose and nature from the type of transactions or business relationship established.

(4) The regulated person shall not apply any simplified CDD whenever there is a suspicion of money laundering or terrorist financing.

24. Reliance on Third Parties.- ²[(1) A regulated person may rely on third party to conduct following CDD measures on its behalf, in line with the requirements specified in these regulations;

- (i) Identifying the customer and verifying that customer's identity using reliable, independent source documents, data or information;
- (ii) Identifying the beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner, such that the financial institution is satisfied that it knows who the beneficial owner is. For legal persons and arrangements this should include financial institutions understanding the ownership and control structure of the customer;
- (iii) Understanding and, as appropriate, obtaining information on the purpose and intended nature of the business relationship;

¹Substituted for "section" by SRO 1356(I)/2023 dated September 21, 2023.

²Regulation 24(1) substituted by SRO 1356(I)/2023 dated September 21, 2023. Before substitution it read as follows:-

"(1) Any regulated person may rely on a third party to conduct CDD on its behalf as set out in provisions 8-23 of these regulations, provided that the regulated person shall-

- (a) remain liable for any failure to apply such indicated CDD measures above;
- (b) immediately obtain from the Third Party the required information concerning CDD;
- (c) take steps to satisfy itself that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay;
- (d) keep that copies of identification; and
- (e) satisfy itself that the Third Party is supervised by an AML/CFT regulatory authority or an equivalent foreign authority and has measures in place for compliance with AML Act obligation of CDD and record keeping."

Provided that despite third party reliance the regulated person shall-

- (a) remain liable for any failure to apply the indicated CDD measures (i) to (iii) above;
- (b) immediately obtain from the Third Party the required information concerning the indicated CDD measures (i) to (iii) above;
- (c) take steps to satisfy itself that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay; and
- (d) satisfy itself that the Third Party is supervised by an AML/CFT regulatory authority or an equivalent foreign authority and has measures in place for compliance with AML Act obligation of CDD and record keeping.];

(2) Where a regulated person relies on a third party that is part of the same corporate group, the regulated person may deem the requirements of ¹[sub-regulation] (1) to be met if:

- (a) the corporate group applies CDD and record-keeping requirements in accordance with the AML Act and its associated regulations;
- (b) the implementation of the requirements in paragraph (a) is supervised by an ²[AML/CFT/CPF] regulatory authority or an equivalent foreign authority; and
- (c) the corporate group has adequate measures in place to mitigate any higher country risks.

(3) In addition to ¹[sub-regulation] (1), when determining in which country a third party may be based, the regulated person shall have regard to available information on the level of country risk

(4) Notwithstanding any reliance upon a third party, the regulated person shall ultimately remain responsible for its ²[AML/CFT/CPF] obligations, including generating STRs and shall carry out ongoing monitoring of such customer itself.

¹Substituted for "subsection" by SRO 1356(I)/2023 dated September 21, 2023.

²Substituted for "AML/CFT" by SRO 1356(I)/2023 dated September 21, 2023.

TFS Obligations

25. (1) The regulated person shall undertake TFS obligations under the United Nations (Security Council) Act 1948 and/or Anti-Terrorism Act 1997 and any regulations made there under, including:

- (a) develop mechanisms, processes and procedures for screening and monitoring customers, potential customers and beneficial owners/ associates of customers to detect any matches or potential matches with the stated designated/ proscribed persons in the SROs and notifications issued by MoFA, NACTA and MoI.
- (b) If during the process of screening or monitoring of customers or potential customers the regulated person finds a positive or potential match, it shall immediately:
 - i. freeze the relevant funds and assets without delay the customer's fund/ policy or block the transaction, without prior notice if it is an existing customer in accordance with the respective SRO.
 - ii. prohibit from making any funds or other assets, economic resources, or financial or other related services and funds in accordance with the respective SRO
 - iii. Reject the transaction or attempted transaction or the customer, if the relationship has not commenced.
- (c) In all cases referred to in (b), the regulated person shall file a suspicious transaction report to the FMU in case that person is designated under United Nations Security Council Resolutions, or proscribed under the Anti-Terrorism Act, 1997 and simultaneously notify the Commission in the manner as may be instructed from time to time by the Commission.
- (d) implement any other obligation under the AML Act 2010, United Nations (Security Council) Act 1948 and Anti-Terrorism Act 1997 and any regulations made there under.

(2) The regulated person is prohibited, on an ongoing basis, from providing any financial services to proscribed/ designated entities and persons or to those who are known for their association with such entities and persons, whether under the proscribed/ designated name or with a different name. The regulated person should monitor their business relationships with the entities and individuals on a continuous basis and ensure that no such relationship exists directly or indirectly, through ultimate control of an account and where any such relationship is found, the regulated person shall take immediate action as per law, including reporting to the FMU.

Explanation:- For the purposes of this ¹[regulation] the expression associates means persons and entities acting on behalf of, or at the direction, or for the benefit, of proscribed/ designated entities and individuals that may be determined on the basis of appropriate screening of sanctions lists, disclosed nominee/beneficiary information, publicly known information, Government or regulatory sources or reliable media information, etc

¹Substituted for "section" by SRO 1356(I)/2023 dated September 21, 2023.

Chapter III

Record Keeping

26. Record Keeping. (1) The records maintained by regulated person as set out in section 7C of the AML Act shall be sufficient to permit reconstruction of individual transactions including the nature and date of the transaction, the type and amount of currency involved and the customer involved in the transactions so as to provide, when necessary, evidence for prosecution of criminal activity.

(2) Where transactions, customers or instruments are involved in litigation or where relevant records are required by a court of law or other competent authority, the regulated person shall retain such records until such time as the litigation is resolved or until the court of law or competent authority indicates that the records no longer need to be retained.

(3) The records of identification data obtained through CDD process including copies of identification documents, account opening forms, Know Your Customer forms, verification documents, other documents and result of any analysis along with records of account files and business correspondence, shall be maintained for a minimum period of five years after termination of the business relationship.

(4) The regulated person will maintain a list of all such customers/accounts where the business relationship was refused or needed to be closed on account of negative verification.

(5) The regulated person shall provide, upon request, from the Commission, investigating or prosecuting agency and FMU, any record within 48 hours after the request has been made or such time as may be instructed by the relevant authority.

Compliance Programs

27. Compliance Program (1) In order to implement compliance programs as set out in 7G of the AML Act, the regulated person shall implement the following internal policies, procedures and controls:

- (a) compliance management arrangements, including the appointment of a compliance officer at the management level, as the individual responsible for the regulated person's compliance with these Regulations, the AML Act and other directions and guidelines issued under the aforementioned regulations and laws;
- (b) screening procedures when hiring employees to ensure the integrity and conduct, skills, and expertise of such employees to carry out their functions effectively;
- (c) an ongoing employee training program; and
- (d) an independent audit function to test the system.

(2) For purposes of (a) the regulated person shall ensure that the compliance officer:

- (a) reports directly to the board of directors or chief executive officer or committee;
- (b) has timely access to all customer records and other relevant information which they may require to discharge their functions, as well as any other persons appointed to assist the compliance officer;
- (c) be responsible for the areas including, but not limited to-
 - i. ensuring that the internal policies, procedures and controls for prevention of ML/TF are approved by the board of directors of the regulated person and are effectively implemented;
 - ii. monitoring, reviewing and updating ¹[AML/CFT/CPF] policies and procedures, of the regulated person;
 - iii. providing assistance in compliance to other departments and branches of the regulated person;
 - iv. timely submission of accurate data/ returns as required under the applicable laws;
 - v. monitoring and timely reporting of Suspicious and Currency Transactions to FMU; and
 - vi. such other responsibilities as the regulated person may deem necessary in order to ensure compliance with these regulations.

28. In the case of a corporate group, in addition to the obligations established in ²[regulation] 27, the regulated person shall implement:

- (a) policies and procedures for sharing information required for the purposes of CDD and risk management;
- (b) the provision, at group-level compliance, audit, and/or AML & CFT functions, of customer, account, and transaction information from branches and subsidiaries when necessary for AML & CFT purposes.
- (c) adequate safeguards on the confidentiality and use of information exchanged, including safeguards to prevent tipping-off.

³**29. Foreign Branches and Subsidiaries.**- The regulated person shall ensure that their foreign branches and majority-owned subsidiaries in countries which do not sufficiently apply the FATF Recommendations, apply AML, CFT & CPF measures consistent with Pakistan's AML/CFT/CPF requirements, to the extent that host country laws and regulations permit. If the foreign country does not permit the proper implementation of AML/CFT measures consistent with that of Pakistan requirements, financial groups should apply appropriate additional measures to manage the risks, and inform the Commission when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures].

¹Substituted for "AML/CFT" by SRO 1356(I)/2023 dated September 21, 2023.

²Substituted for "section" by SRO 1356(I)/2023 dated September 21, 2023.

³Regulation 29 substituted by SRO 1356(I)/2023 dated September 21, 2023. Before substitution it read as follows:-

"29. The regulated person shall ensure that their foreign branches and majority-owned subsidiaries apply AML & CFT measures consistent with Pakistan requirements where the minimum AML & CFT requirements are less strict than Pakistan, to the extent that host country laws. If the foreign country does not permit the proper implementation of AML/CFT measures consistent with that of Pakistan requirements, financial groups should to apply appropriate additional measures to manage the risks, and inform the Commission."

30. Correspondent Relationship.- (1) A regulated person shall perform the following measures, in addition to other measures prescribed in these regulations, when forming a correspondent relationship

- (a) assess the suitability of the respondent financial institution by taking the following steps-
 - i. gather adequate information about the respondent financial institution to understand fully the nature of the respondent financial institution's business, including making appropriate inquiries on its management, its major business activities and the countries or jurisdictions in which it operates;
 - ii. determine from any available sources the reputation of the respondent financial institution and the quality of supervision over the respondent financial institution, including whether it has been the subject of money laundering or terrorism financing investigation or regulatory action; and
 - iii. assess the respondent financial institution's ¹[AML/CFT/CPF] controls and ascertain that they are adequate and effective, having regard to the ¹[AML/CFT/CPF] measures of the country or jurisdiction in which the respondent financial institution operates.
- (b) clearly understand and document the respective ¹[AML/CFT/CPF] responsibilities of the financial institution and the respondent financial institution;
- (c) assess the respondent financial institution in the context of sanctions/embargoes and Advisories about risks; and
- (d) obtain approval from the financial institutions' senior management before providing correspondent services to a new financial institution.

(2) Regulated person shall document the basis for its satisfaction that the requirements of this regulations are met.

(3) Regulated person shall pay special attention when establishing or continuing correspondent relationship with financial institutions which are located in jurisdictions that have been identified or called for by FATF for inadequate and poor ¹[AML/CFT/CPF] standards in the fight against money laundering and financing of terrorism.

(4) No regulated person shall enter into or continue correspondent relationship with another financial institution that does not have adequate controls against money laundering or terrorism financing activities, is not effectively supervised by the relevant authorities or is a shell financial institution.

Explanation:- For the purposes of this regulation the expression "shell financial institution" means a financial institution incorporated, formed or established in a country or jurisdiction where the financial institution has no physical presence and which is unaffiliated with a financial group that is subject to effective consolidated supervision.

¹Substituted for "AML/CFT" by SRO 1356(I)/2023 dated September 21, 2023.

(5) A regulated person shall also take appropriate measures when establishing a Correspondent Relationship, to satisfy itself that its respondent financial institutions do not permit their accounts to be used by shell financial institutions.

Penalties

31. Penalty.- (1) Any contravention of these regulations shall be cognizable by the Commission in accordance with section 6A of the AML Act and liable to sanction provided in the AML/CFT Sanctions Rules, 2020 and imposed by the Commission according to Clause (h) of Sub-section (2) of Section 6A of AML Act.

32. Repeal.- (1) The following notifications ¹[and circulars], hereinafter referred to as repealed instruments, are hereby repealed,

- ²(a) Circular No 14/2010 dated July 5, 2010;
 - (b) Circular No 14/2013 dated August 5, 2013
 - (c) Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018 vide S. R. O. 770(I)/2018 dated June 13, 2018.
 - (d) Circular No1201(1)/2018 dated October 3, 2018
 - (e) Circular No 105/(1)/2021 dated January 29, 2021.]
- (2) Provided that repeal of the repealed instrument shall not-
- (a) revive anything not in force at the time at which the repeal take effect; or
 - (b) affect the previous operation of the repealed instruments or anything duly done or suffered thereunder; or
 - (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the said repealed instruments; or
 - (d) affect any penalty imposed, forfeiture made or punishment incurred in respect of any offence or violations committed against or under the repealed instrument; or
 - (e) affect any inspection, investigation, prosecution, legal proceeding or remedy in respect of any obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such inspection, investigation, prosecution, legal proceedings or remedy may be made, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if these regulations has not been notified.

¹Words inserted by SRO 1356(I)/2023 dated September 21, 2023.

²Substituted for clause (a) by SRO 1356(I)/2023 dated September 21, 2023. Before substitution it read as follows:-

“(a) Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018 vide S. R. O. 770(I)/2018 dated June 13, 2018.”

(3) Anything done, actions taken, orders passed, registration granted, notifications issued, proceedings initiated and instituted, prosecutions filed, processes or communications issued and powers conferred, assumed or exercised by the Commission under the repealed instruments, shall, on the coming into operation of these regulations, be deemed to have been validly done, taken, passed, granted, issued, initiated or instituted, filed, conferred, assumed and exercised and every action, prosecution or proceeding instituted and every order, directive, notification, circular etc. issued by the Commission shall be deemed to have been initiated, instituted or issued as if the repealed instruments have not been repealed and shall be proceeded with to completion and be enforced and have effect accordingly.

—

Sheikh Asif Salam

Annex 1

S. No.	Type of Customer	Minimum Documents required for CDD
1.	Individuals	<p>A ¹[copy] of any one of the following valid identity documents:</p> <p>(i) Computerized National Identity Card (CNIC)/Smart National Identity Card (SNIC) issued by NADRA.</p> <p>(ii) National Identity Card for Overseas Pakistani (NICOP/SNICOP) issued by NADRA.</p> <p>(iii) Form-B/Juvenile card ²[Child Registration Certificate (CRC)] issued by NADRA to children under the age of 18 years.</p> <p>(iv) Pakistan Origin Card (POC) issued by NADRA.</p> <p>(v) Alien Registration Card (ARC) issued by National Aliens Registration Authority (NARA), Ministry of Interior (local currency account only).</p> <p>(vi) ³[] Proof of Registration (POR) Card issued by NADRA</p> <p>(vii) Passport; having valid visa on it or any other proof of legal stay along with passport (foreign national individuals only).</p>
2.	Joint Account	<p>(i) A ¹[copy] of any one of the documents mentioned at Serial No. I;</p> <p>(ii) In the case of joint accounts, CDD measures on all of the joint account holders shall be performed as if each of them is individual customers of the RP.</p>
3.	Sole proprietorship	<p>(i) ¹[Copy] of identity document as per Sr. No. 1 above of the proprietor.</p> <p>(ii) Attested copy of registration certificate for registered concerns.</p> <p>(iii) Sales tax registration or NTN, wherever applicable</p> <p>(iv) Account opening requisition on business letter head.</p> <p>(v) Registered/ Business address.</p> <p>⁴[(vi) Certificate or proof of membership of trade bodies etc., (if any)]</p>

E2 50/10-12-2023

¹Substituted for "photocopy" by SRO 1356(I)/2023 dated September 21, 2023.

²Words inserted by SRO 1356(I)/2023 dated September 21, 2023.

³Words "Valid" deleted by SRO 1356(I)/2023 dated September 21, 2023.

⁴Words inserted by SRO 1356(I)/2023 dated September 21, 2023.

4.	Partnership	(i) ¹ [Copies] of identity documents as per Sr. No. 1 above of all the partners and authorized signatories. (ii) Attested copy of 'Partnership Deed'
		(iii) Attested copy of Registration Certificate with Registrar of Firms. In case the partnership is unregistered, this fact shall be clearly mentioned on the Account Opening Form (iv) Authority letter from all partners, in original, authorizing the person(s) to operate firm's account. (v) Registered/ Business address.
5.	Limited Liability Partnership (LLP)	(i) ¹ [Copies] of identity documents as per Sr. No. 1 above of all the partners and authorized signatories. (ii) Certified Copies of: (a) 'Limited Liability Partnership Deed/ Agreement. (b) LLP-Form-III having detail of partners/ designated partner in case of newly incorporated LLP. (c) LLP-Form-V regarding change in partners/ designated partner in case of already incorporated LLP. (iii) Authority letter signed by all partners, authorizing the person(s) to operate LLP account.
6.	Limited Companies/ Corporations	(i) Certified copies of: (a) Resolution of Board of Directors for opening of account specifying the person(s) authorized to open and operate the account; (b) Memorandum and Articles of Association; (ii) Certified copy of Latest 'Form-A/Form-B'. (iii) Incorporate Form II in case of newly incorporated company and Form A / Form C whichever is applicable; and Form 29 in already incorporated companies (iv) ¹ [Copies] of identity documents as per Sr. No. 1 above of all the directors and persons authorized to open and operate the account; (v) ¹ [Copies] of identity documents as per Sr. No. 1 above of the beneficial owners.
7.	Branch Office or Liaison Office of Foreign Companies	(i) A copy of permission letter from relevant authority i-e Board of Investment. (ii) ¹ [Copies] of valid passports of all the signatories of account.

¹Substituted for "photocopies" by SRO 1356(I)/2023 dated September 21, 2023.

		<p>(iii) List of directors on company letter head or prescribed format under relevant laws/regulations.</p> <p>(iv) Certified copies of</p> <p>(v) Form II about particulars of directors, Principal Officer etc. in case of newly registered branch or liaison office of a foreign company</p> <p>(vi) Form III about change in directors, principal officers etc. in already registered foreign companies branch or liaison office of a foreign company</p> <p>(vii) A Letter from Principal Office of the entity authorizing the person(s) to open and operate the account.</p> <p>(viii) Branch/Liaison office address.</p>
8.	Trust, Clubs, Societies and Associations etc.	<p>(i) Certified copies of:</p> <p>(a) Certificate of Registration/Instrument of Trust</p> <p>(b) By-laws/Rules & Regulations</p> <p>(ii) Resolution of the Governing Body/Board of Trustees/Executive Committee, if it is ultimate governing body, for opening of account authorizing the person(s) to operate the account.</p> <p>(iii) ¹[Copy] of identity document as per Sr. No. 1 above of the authorized person(s) and of the members of Governing Body/Board of Trustees / Executive Committee, if it is ultimate governing body.</p> <p>(iv) Registered address/ Business address where applicable.</p>
9.	NGOs/NPOs/ Charities	<p>(i) Certified copies of:</p> <p>(a) Registration documents/certificate</p> <p>(b) By-laws/Rules & Regulations</p> <p>(ii) Resolution of the Governing Body/Board of Trustees/Executive Committee, if it is ultimate governing</p> <p>(iii) body, for opening of account authorizing the person(s) to operate the account.</p> <p>(iv) ¹[Copy] of identity document as per Sr. No. 1 above of the authorized person(s) and of the members of Governing Body/Board of Trustees / Executive Committee, if it is ultimate governing body.</p>

¹Substituted for "Photocopy" by SRO 1356(I)/2023 dated September 21, 2023.

III - 812(2)

Anti Money Laundering Reg., 2020

Company Law & Procedures

		<p>(v) Any other documents as deemed necessary including its annual accounts/ financial statements or disclosures in any form which may help to ascertain the detail of its activities, sources and usage of funds in order to assess the risk profile of the prospective customer.</p> <p>(vi) Registered address/ Business address.</p>
10.	Agents	<p>(i) Certified copy of 'Power of Attorney' or 'Agency Agreement'.</p> <p>(ii) ¹[Copy] of identity document as per Sr. No. 1 above of the agent and principal.</p> <p>(iii) The relevant documents/papers from Sr. No. 2 to 7, if agent or the principal is not a natural person.</p> <p>(iv) Registered/ Business address.</p>
11.	Executors and Administrators	<p>(i) ¹[Copy] of identity document as per Sr. No. 1 above of the Executor/Administrator.</p> <p>(ii) A certified copy of Letter of Administration or Probate.</p> <p>(iii) Registered address/ Business address.</p>
12.	Minor Accounts	<p>(i) ¹[Copy] of Form-B, Birth Certificate or Student ID card (as appropriate).</p> <p>(ii) ¹[Copy] of identity document as per Sr. No. 1 above of the guardian of the minor.</p>
² [13]	Mentally Disordered Person Account:	<p>(i) Copy of applicable valid identity documents of mentally disordered person and court appointed manager under the applicable laws related to mental health;</p> <p>(ii) Certified true copy of court order for appointment of manager for mentally disordered person;</p> <p>(iii) Verification of identity document through bio-metric verifications from NADRA for both persons i.e. mentally disordered person and the manager appointed by court;</p> <p>(iv) Verification of court order from the concerned court (to be obtained by Regulated Person);</p> <p>(v) Account would be opened in the name of mentally disordered person and the same will be operated by the court appointed manager;</p> <p>(vi) All CDD requirements/formalities should be conducted / completed for both persons; and</p> <p>(vii) In case of change of manager by the court, the CDD will be conducted for the new appointed manager by the Regulated Person afresh.]</p>

¹Substituted for "Photocopy" by SRO 1356(I)/2023 dated September 21, 2023.

²Inserted by SRO 1356(I)/2023 dated September 21, 2023.

III - 812(3)

Pt. III, Rules & Regulations

Anti Money Laundering Reg., 2020

Note:

- (i) For due diligence purposes, at the minimum following information shall also be obtained and recorded on KYC (Know Your Customer)/CDD form or account opening form:
- (a) Full name as per identity document;
 - (b) Father/Spouse Name as per identity document;
 - (c) Mother Maiden Name;
 - (d) Identity document number along with date of issuance and expiry;
 - (e) Existing residential address (if different from CNIC);
 - (f) Contact telephone number(s) and e-mail (as applicable);
 - (g) Nationality-Resident/Non-Resident Status
 - (h) FATCA/CRS Declaration wherever required;
 - (i) Date of birth, place of birth;
 - (j) Incorporation or registration number (as applicable);
 - (k) Date of incorporation or registration of Legal Person/ Arrangement;
 - (l) Registered or business address (as necessary);
 - (m) Nature of business, geographies involved and expected type of counter-parties (as applicable);
 - (n) Type of account/financial transaction/financial service;
 - (o) Profession / Source of Earnings/ Income: Salary, Business, investment income;
 - (p) Purpose and intended nature of business relationship;
 - (q) Expected monthly turnover (amount and No. of transactions); and
 - (r) Normal or expected modes of transactions/ Delivery Channels.
- ¹[(ii) The copies of identity documents shall be validated through NADRA verisys or Biometric Verification. The regulated person shall retain copy of NADRA verisys or Biometric Verification (hard or digitally) as a proof of obtaining identity from customer; and]
- (iii) In case of a salaried person, in addition to CNIC, a copy of his salary slip or service card or certificate or letter on letter head of the employer will be obtained.
- (iv) In case of expired CNIC, account may be opened on the basis of attested copies of NADRA receipt/token and expired CNIC subject to condition that regulated person shall obtain copy of renewed CNIC of such customer within 03 months of the opening of account.

¹Condition (ii) inserted by SRO 1356(I)/2023 dated September 21, 2023. Earlier it was deleted by SRO 562(I)/2022 dated April 27, 2022. Before omission it read as follows:-

“(ii) The photocopies of identity documents shall be validated through NADRA verisys or Biometric Verification. The regulated person shall retain copy of NADRA Verisys or Biometric Verification (hard or digitally) as a proof of obtaining identity from customer.”

- (v) For CNICs which expire during the course of the customer's relationship, regulated person shall design/ update their systems which can generate alerts about the expiry of CNICs at least 01 month before actual date of expiry and shall continue to take reasonable measures to immediately obtain copies of renewed CNICs, whenever expired. In this regard, regulated person are also permitted to utilize NADRA Verisys reports of renewed CNICs and retain copies in lieu of valid copy of CNICs. However, obtaining copy of renewed CNIC as per existing instructions will continue to be permissible.
- (vi) The condition of obtaining Board Resolution is not necessary for foreign companies/entities belonging to countries where said requirements are not enforced under their laws/regulations. However, such foreign companies will have to furnish Power of Attorney from the competent authority for establishing Business Relationship to the satisfaction of the regulated person.
- ¹[(vii) The condition of obtaining photocopies of identity documents of directors of Limited Companies/ Corporations is relaxed in case of Government/ Semi Government entities, where SECP RPs should obtain photocopies of identity documents of only those directors and persons who are authorized to open and operate the account. However, SECP RPs shall validate identity information including CNIC numbers of other directors from certified copies of Form-A / Form-B / Form-29.]
- (viii) Government entities accounts shall not be opened in the personal names of a government official. Any account which is to be operated by an officer of the Federal or Provincial or Local Government in his/her official capacity, shall be opened only on production of a special resolution or authority from the concerned administrative department or ministry duly endorsed by the Ministry of Finance or Finance Department/Division of the concerned Government.

Explanation:- For the purposes of this regulation the expression "Government entities" includes a legal person owned or controlled by a Provincial or Federal Government under Federal, Provincial or local law.

Explanation:- For the purpose of this Annexure I the expression "NADRA" means National Database and Registration Authority established under NADRA Act, (VIII of 2000).

¹Condition (vii) substituted by SRO 562(I)/2022 dated April 27, 2022. Before substitution it read as follows:-

- (vii) The condition of obtaining photocopies of identity documents of directors of Limited Companies/Corporations is relaxed in case of Government/Semi Government entities, where regulated person should obtain photocopies of identity documents of only those directors and persons who are authorized to establish and maintain Business Relationship. However, regulated person shall validate identity information including CNIC numbers of other directors from certified copies of 'Form-A/Form-B' and verify their particulars through NADRA Verisys. The Verisys reports should be retained on record in lieu of photocopies of identity documents.

Directive on additional fit and proper criteria for sponsors beneficial owners:- Following is the text of SRO 933(I)/2020 dated September 30, 2020:-

“Whereas the Securities and Exchange Commission of Pakistan (the Commission) has prescribed the Insurance Companies (Sound and Prudent Management) Regulations, 2012 in exercise of the powers conferred upon the Commission with respect to fitness and propriety requirements imposed upon the Chief Executives, directors and key officers of the insurance companies through SRO 15(I)/ 2012 dated January 9, 2012 in order to prepare and establish the insurance sector to meet the challenges of globalization and to avoid maladministration and that the insurance companies must be run by competent persons with adequate know-how of the insurance business without any involvement in financial crimes.

AND WHEREAS the Commission has to ensure compliance and effective implementation of the Anti-Money Laundering Act, 2010 (AML Act, 2010) and the Anti Terrorism Act, 1997 along with rules and regulations made thereunder.

NOW THEREFORE, in exercise of the powers conferred under Section 40B read with clause (w) and clause (y) of sub-section (4) and clause (fa) and clause (g) of sub-section 6 of Section 20 of the Securities and Exchange Commission of Pakistan Act, 1997, the Commission hereby directs all the regulated, licensed and associated persons and entities which fall under the domain of insurance sector regulated by the Commission to comply with following requirements in addition to the requirements that the Commission has already notified either through Rules, Regulations or through other legislative instrument, in supersession of the SRO 1525(I)/ 2018 dated December 14, 2018 and hereby saving all actions taken and anything done under the said SRO while being in-force, namely:-

1. The eligible person who has made application under Section 6 of the Insurance Ordinance, 2000 (the Ordinance) and insurance intermediaries who have applied for the licence under the applicable provisions of the Ordinance, shall submit with the Commission, at the time of registration as insurer or insurance intermediary, as the case may be, undertaking(s) (on the prescribed format attached as Annexure A) duly signed by the sponsors, promoters and ultimate beneficial owners of the insurer that they have not been convicted in criminal breach of trust, fraud, offences of terrorism financing or money laundering including predicate offences as provided in the AML Act, 2010, laws made thereunder, or any other AML/CFT requirements notified by the Commission, and are not proscribed persons either convicted or not “as mentioned in the notifications issued by the Ministry of Foreign Affairs on United Nations Security Council Resolutions or intimation from National Counter Terrorism Authority/ Law Enforcement Agencies/ Home Departments of Provinces/Ministry of Interior”

Explanation: ultimate beneficial owner” means a natural person who ultimately owns or controls a company, whether directly or indirectly, through **at least ten percent shares** or voting rights or by exercising effective control in that company through such other means as may be specified by the Commission.

The term ‘Insurance Intermediary’ includes insurance agent, corporate insurance agent, insurance surveyor, insurance broker and third-party administrator (for health insurance).

2. The insurer at the time of seeking approval in terms of the Insurance Companies (Sound and Prudent Management) Regulations, 2012, shall submit to the Commission, undertaking(s) duly signed by the proposed directors or chief executive or principal officer of the insurer that they have not been convicted in criminal breach of trust, fraud, offences of money laundering including predicate offences as provided in the AML Act, 2010, laws made thereunder, or any other AML/CFT requirements notified by the Commission;

3. The insurer shall submit an affidavit annually to the Commission that its key officers, as defined in the Insurance Companies (Sound and Prudent Management) Regulations, 2012, have not been convicted in criminal breach of trust, fraud, offences of money laundering including predicate offences as provided in the AML Act, 2010, laws made thereunder, or any other AML/CFT requirements notified by the Commission;
4. The applicant at the time of seeking approval for issuance of licence as insurance broker in terms of the Insurance Rules, 2017 and third party administrator (for health insurance) under the TPA Regulations, 2014, shall submit to the Commission, undertaking(s) (on the prescribed format attached as Annexure (A) duly signed by the proposed directors or chief executive, principal officer and key officers of the insurance broker that they have not been convicted in criminal breach of trust, fraud, offences of money laundering including predicated offences as provided in the AML Act, 2010, laws made thereunder, or any other AML/CFT requirements notified by the Commission;
5. The insurer during the execution of various processes relating to insurance policies, including but not limited to underwriting, issuance, endorsement, withdrawal, claim, or maturity, shall ensure that there does not exist any conflict of interest of the insurance intermediaries, particularly, in terms of AML Act, 2010, laws made thereunder, or any other AML/CFT requirements notified by the Commission;
6. At the time of change in ultimate beneficial owner of insurer and also at the time of acquisition of shareholding of an insurance company of more than ten per cent (10%) in terms of Section 67 of the Ordinance, the acquirer(s) or the authorized person in case of corporate entity shall submit undertaking (on the prescribed format attached as Annexure A) that the acquirer and the ultimate beneficial owners, as the case may be, have not been convicted in criminal breach of trust, fraud, offences of money laundering including predicated offences as provided in the AML Act, 2010, laws made thereunder, or any other AML/CFT requirements notified by the Commission;
7. Any person to whom this direction applies and who contravenes or fails to comply with the requirements of this direction or submits an affidavit which is false in material respect or where under a misstatement is made shall be liable to imposition of penalty under Section 40A of the Securities and Exchange Commission of Pakistan Act, 1997 which may extend to ten million rupees and where contravention is a continuing one, with a further penalty which may extend to one hundred thousand rupees for every day after the first during which such contravention continues.

Annexure "A"**UNDERTAKING**

(On Stamp Paper of Appropriate Value)

I, _____ son/daughter/wife of _____ adult, resident of _____ and holding CNIC/ Passport No. _____ in the capacity of _____ (e.g. sponsor, director, UBO) do hereby state on solemn affirmation as under:-

- (a) I have not been convicted in criminal breach of trust, fraud, offences of terrorism financing or money laundering including predicated offences as provided in the Anti-Money Laundering Act, 2010 (VII of 2010) or contravened the provision of any regulations/directives issued by the Commission in this regard;
- (b) I am not proscribed person either convicted or not "as mentioned in the notifications issued by the Ministry of Foreign Affairs on United Nations Security Council Resolutions or intimation from National Counter Terrorism Authority/ Law Enforcement Agencies/ Home Departments of Provinces/Ministry of Interior"
- (c) I have not been convicted of an offence involving moral turpitude;
- (d) I have not been subject to adverse findings, after conducting an inquiry, by the Commission or any other regulatory or professional body or government agency;

Acceptable Quantitative Tolerance Levels and other Conditions for Shariah Screening of Securities and Companies.- Following is the text of SRO 1348(I)/2023 dated September 19, 2023:-

“In exercise of the powers conferred by section 510 of the Companies Act, 2017 (XIX of 2017) read with sub-clause (b) of clause (i) of sub-regulation (1) of regulation 10 of the Shariah Governance Regulation, 2023, the Securities and Exchange Commission of Pakistan is pleased to notify the following acceptable quantitative tolerance levels and other conditions for Shariah screening of securities and companies:

1. In the case of companies, whether listed or not:-

- (a) For the purposes of sub-section (1) of Section 451 of the Companies Act, 2017, the following minimum acceptable quantitative tolerance levels for Shariah screening of shares of the companies, whether listed or not, shall be applied, while considered an application under regulation 4, in addition to the qualitative criteria and other conditions provided in the Shariah Governance Regulations, 2023.
- (i) **The ratio of interest-bearing debt to total assets** should be less than 37%, i.e., the collective amount raised as a loan or debt on interest by the company, whether long-term or short-term, does not exceed thirty-seven percent of the total assets of the company on the reporting date.
For this purpose, interest bearing debt includes bonds, term finance certificates, commercial papers, conventional bank loans, finance lease, hire purchase, issuing preference shares, etc.;
- (ii) **The ratio of non-Shariah-compliant investments to total assets** should be less than 33%, i.e., the total amount of non-Shariah-compliant investments by the company, whether short-, medium-, or long-term, shall not exceed thirty three percent of the total assets of the company on the reporting date.
For this purpose, non-Shariah compliant investments include interest bearing deposits, equity investments in non-Shariah compliant companies, investments in conventional mutual funds, conventional money market instruments, commercial paper, bonds, Pakistan investment bonds, foreign investment bonds, treasury bills, certificate of investments, certificates of deposits, term-finance certificates, defence saving certificates, national saving certificates, derivatives, etc.; and
- (iii) **The ratio of non-Shariah-compliant income to total revenue** should be less than 5%, i.e., the amount of non-Shariah-compliant income should not exceed five percent of the total revenue of the company, irrespective of whether the revenue is generated by undertaking a prohibited activity, by ownership of a prohibited asset, or in some other way.
For this purpose, total revenue includes gross revenue plus any other revenue earned by the company; and non-Shariah compliant income includes income from gambling, income from interest based transactions, income from gharar based transactions i.e. derivatives, insurance claim reimbursement from a conventional insurance company, any penalty charged on late payment in credit sale, income from casinos, addictive drugs, alcohol, dividend income from above mentioned businesses or companies which have been declared non-Shariah compliant due to non-compliance to any of the mentioned criteria for Shariah compliance, etc.
- (b) For the purposes of the transfer of shares of such companies due to sale or purchase,

-
- (i) the ratio of illiquid assets to total assets should be at least 25%, and
 - (ii) the market price per share in the case of a listed company or the breakup price per share in the case of an unlisted company should be at least equal to or greater than net liquid assets per share on the reporting date.

Calculated as:

$$\text{Net Liquid Assets Per Share} = \frac{\text{Liquid Assets} - \text{Total Liabilities}}{\text{Total number of outstanding shares}}$$

- (c) In case of non-compliance with the conditions stipulated in clause (b) above, on the date of transfer, a certificate from any registered Shariah advisor, providing therein a Shariah basis for the permissibility of the pricing and transferability of the shares of the unlisted company, shall be obtained. In the case of shares of listed companies, the responsibility to ensure Shariah compliance at the transfer of shares shall rest with the transacting parties.
- (d) The Commission may, for reasons to be recorded in writing and subject to such conditions or restrictions as it may deem fit, on recommendation of the Shariah Advisory Committee, relax any of the requirements of this notification in case any difficulty arises in giving effect to any of the requirements of this regulation in a particular case or class of cases.

2. In the case of listed securities of companies

- (a) For the purposes of sub-section (2) of Section 451 of the Companies Act, 2017, every person (e.g., index provider), other than the issuer, who claims that shares of a listed company are Shariah compliant, in addition to the qualitative criteria like nature of business of the said company and other conditions provided in the Shariah Governance Regulations, 2023, shall use the following minimum acceptable quantitative tolerance levels for Shariah screening of listed securities:

- (i) **The ratio of interest-bearing debt to total assets** should be less than 37%, i.e., the collective amount raised as a loan or debt on interest by the company, whether long-term or short-term, does not exceed thirty-seven percent of the total assets of the company on the reporting date.

For this purpose, interest bearing debt includes bonds, term finance certificates, commercial papers, conventional bank loans, finance lease, hire purchase, issuing preference shares, etc.;

- (ii) **The ratio of non-Shariah-compliant investments to total assets** should be less than 33%, i.e., the total amount of non-Shariah-compliant investments by the company, whether short, medium, or long-term, and other Shariah non-compliant investments, shall not exceed thirty three percent of the total assets of the company on the reporting date. For this purpose, non-Shariah compliant investments include interest bearing deposits, equity investments in non-Shariah compliant companies, investments in conventional mutual funds, conventional money market instruments, commercial paper, bonds, Pakistan investment bonds, foreign investment bonds, treasury bills, certificate of investments, certificates of deposits, term-finance certificates, defence saving certificates, national saving certificates, derivatives, etc.; and

- (iii) **The ratio of non-Shariah-compliant income to total revenue** should be less than 5%, i.e., the amount of non-Shariah-compliant income should not exceed five percent of the total revenue of the company, irrespective of whether the revenue is generated by undertaking a prohibited activity, by ownership of a prohibited asset, or in some other way.

For this purpose, total revenue includes gross revenue plus any other revenue earned by the company; and non-Shariah compliant income includes income from gambling, income from interest based transactions, income from gharar based transactions i.e. derivatives, insurance claim reimbursement from a conventional insurance company, any penalty charged on late payment in credit sale, income from casinos, addictive drugs, alcohol, dividend income from above mentioned businesses or companies which have been declared non-Shariah compliant due to noncompliance to any of the mentioned criteria for Shariah compliance, etc.

- (b) For the purposes of trading at the securities exchange and the transfer of shares of such companies due to sale or purchase,
- (i) the ratio of illiquid assets to total assets should be at least 25%, and
 - (ii) the market price per share in the case of a listed company or the breakup price per share in the case of an unlisted company should be at least equal to or greater than net liquid assets per share on the reporting date.

Calculated as:

$$\text{Net Liquid Assets Per Share} = \frac{\text{Liquid Assets} - \text{Total Liabilities}}{\text{Total number of outstanding shares}}$$

- (c) In case of non-compliance with the conditions stipulated in clause (b) above, on the date of transfer, the responsibility to ensure Shariah compliance at the transfer of shares shall rest with the transacting parties, who may seek guidance from Shariah advisor.
- (d) A person that has been granted approval by the Commission under regulation 9 of the Shariah Governance Regulations, 2023, shall prepare an initial list of Shariah-compliant shares in accordance with the above-mentioned criteria.
- (e) In cases of legitimate reasons, deviation may be allowed from the aforementioned criteria for the preparation of the initial list of Shariah-compliant shares, subject to the following additional conditions:
- (i) prior approval from the Shariah supervisory board or the Shariah advisor, of the person as mentioned in clause (a), as the case may be, shall be obtained;
 - (ii) the Shariah supervisory board or the Shariah advisor, as the case may be, shall record the reasons and the Shariah basis before granting such approval; and
 - (iii) Complete disclosure of (i) and (ii) above shall be made through the official website of the person granted approval by the Commission under regulation 9 of the Shariah Governance Regulations, 2023, and through other suitable means in a timely manner.
- (f) For the purposes of clause (e) above, special consideration may be given to the companies where the company
- (i) is engaged in technology, services, or other businesses that do not require large infrastructure;
 - (ii) has circular debt or any other similar debt due to government policy or practice;
 - (iii) is in the process of listing and public offering, and its total assets need to be adjusted to reflect the expected sum of money raised from the public offering.
 - (iv) is in breach of any of the minimum acceptable quantitative tolerance levels temporarily and provides its commitments to rectify the breach within a maximum of the next two quarters.

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- (g) In the event of the exclusion of any security from the initial list due to a breach of any of the minimum acceptable quantitative tolerance levels for Shariah screening, investors may retain previously purchased securities until Shariah status changes. If the company remains non-compliant after the next two quarters, the investor or company may disinvest such security(s) within the next 30 days.
- (h) The Commission may, for reasons to be recorded in writing and subject to such conditions or restrictions as it may deem fit, on recommendation of the Shariah Advisory Committee, relax any of the requirements of this notification in case any difficulty arises in giving effect to any of the requirements of this regulation in a particular case or class of cases.

3. In the case of unlisted securities:- For the purposes of sub-section (2) of Section 451 of the Companies Act, 2017, any person other than the issuer who claims that any unlisted security is Shariah compliant shall obtain approval of the Commission under regulation 9 and clause (a), sub-regulation (1) of 11 of the Shariah Governance Regulations, 2023.”

Sheikh Asif Salam

Unlisted Companies Buy Back of Shares Regulations, 2023

S.R.O. 1441(I)/2023 dated October 12, 2023.- In exercise of powers conferred under sub-section (1) of sections 512 read with sections 88 and 458A of the Companies Act 2017 (XIX of 2017), the Securities and Exchange Commission of Pakistan is pleased to notify the following Unlisted Companies (Buy-Back of Shares) Regulations, 2023, the same having been previously published in the official Gazette *vide* Notification No. S.R.O. 2066(I)/2022 dated November 25, 2022, namely:-

Chapter I Preliminary

1. Short Title, Commencement and applicability.- (1) These regulations shall be called the Unlisted Companies (Buy-Back of Shares) Regulations, 2023.

(2) They shall come into force at once.

(3) These regulations shall be applicable to buy-back of shares of unlisted companies in pursuance of section 88 of the Companies Act, 2017 (XIX of 2017).

2. Definitions.- (1) In these regulations, unless there is anything repugnant in the subject or context,-

(a) "Act" means the Companies Act, 2017 (XIX of 2017);

(b) "Annexure" means annexure appended to these regulations;

(c) "purchase" means buy-back of its own shares by a purchasing company under section 88 of the Act and these regulations;

(d) "purchasing company" means a public unlisted or a private limited company that intends to purchase its own shares under section 88 of the Act and these regulations; and

(e) "purchase period" means the period of sixty days commencing from the date of dispatch of the offer letter;

(2) All other words and expressions used but not defined in these regulations shall have the same meanings as are assigned to them in the Act and the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997).

Chapter – II

Eligibility for Purchase

3. Eligibility Requirements for the Purchase.- Subject to section 88 of the Act, a public unlisted or a private company, fulfills the following conditions:-

- (a) it has distributable profits or reserves for the purpose of purchase of its own shares:

Provided that a startup company may also use other resources for purchase of its own shares subject to the condition that it remains solvent;

Provided further that if the purchasing company is engaged in any business activity which is subject to license or approval by the Commission, it has obtained permission from the relevant department in respect of the purchase;

- (b) it has obtained approval of its members for purchase through special resolution;
- (c) the purchase is recommended by the board through resolution and the board of directors has undertaken through a resolution that the funds specified for the purchase are available with the purchasing company and after the purchase, the purchasing company is capable of meeting all its financial obligations on time during the period up to the end of the immediately succeeding twelve months;
- (d) the secured creditors of the company have no objection to the proposed purchase of shares by the purchasing company;
- (e) the board of directors of a purchasing company shall not propose or recommend a purchase in any of the following circumstances namely:-
- (i) its winding up proceedings have commenced;
- (ii) a scheme of arrangement, compromise, reconstruction, merger or demerger is approved by the board of directors unless the purchase is a part of such arrangement, compromise, reconstruction, merger or demerger; and
- (iii) it is not compliant with the provisions of the Act, rules and regulations framed thereunder.

4. Procedure for Purchase.- (1) The board of directors of the purchasing company shall recommend and approve the purchase of shares specifying the number of shares proposed to be purchased, purpose of the purchase i.e. cancellation of shares, purchase price, period within which the purchase shall be made, source of funds, justification for the purchase and effect on the financial position of the company.

(2) The general meeting in which the special resolution is to be passed shall be held not later than forty-five days of the date of the meeting of the board of directors in which the purchase is approved.

(3) The notice of the general meeting shall be accompanied by the statement specifying at least such information as contained in sub-regulation (1) alongwith a declaration as per format appended with the annexure to these regulations, signed by at least two directors, one of whom may be chief executive, on behalf of the board of directors, to the effect that the board has made full enquiry into the affairs of the company and have concluded that the company is capable of meeting its liabilities and will not be rendered insolvent for twelve months from the date of declaration adopted by the board.

(4) Within three days of passing of the special resolution, the purchasing company shall dispatch the offer letter to all the existing members of the company signed by at least two directors and in case of Single Member Company, by the sole director, limiting a time of not less than seven days from the date of the offer, through registered mail or courier or electronic mode of communication:

Provided that if the offer is not accepted within the specified time period, the offer shall be deemed to be declined.

(5) The offer for purchase of shares made to members of the purchasing company shall be in proportion to the existing shares already held by them:

Provided that if all the members entitled to attend and vote at any meeting convened to approve purchase of shares so agree, a resolution may be proposed and passed unanimously for purchase of shares on non-proportionate basis.

(6) The members shall submit acceptance or decline letter as the case may be, to the purchasing company and in case of acceptance, shall also surrender physical share certificates and/or authorization for shares held in book entry form subject to the procedure specified under the relevant law, rules or regulations, within time period as provided in offer letter.

(7) The payment for accepted shares shall be made by the purchasing company through banking channel not later than ten days of the close of the offer.

(8) If the whole or any part of the shares offered is declined by any member, the directors shall offer such shares within a period of seven days from the close of the offer, to other members of the company in proportion to the existing shares already held by them.

5. Cancellation of the Purchased Shares and Procedure.- Subject to 2nd proviso to sub-section (2) of section 88 of the Act, all shares that have been purchased shall be deemed to be cancelled immediately after completion of the purchase, in the following manner:

- (a) where the shares purchased are in physical form, these shall be marked as cancelled within seven days of the completion of purchase;
- (b) where the shares purchased are in book entry form, it shall follow the procedure prescribed by the central depository for cancellation of such shares.

Chapter III
Obligations

6. Obligations of the Purchasing Company.- (1) The purchasing company shall,-

- (a) send the notice of general meeting along with the relevant information and documents to all the members of the company;
 - (b) dispatch letter of offer as referred to in regulation 4 to the members;
 - (c) make payment for purchase of shares in cash through banking channel which shall be out of the distributable profits or reserves specifically maintained for the purpose;
 - (d) mark physical shares as cancelled and ensure that for shares in book entry form prescribed procedure for cancellation is duly followed;
 - (e) file with the registrar the relevant special resolution within fifteen days of the date of the special resolution;
 - (f) file with the Registrar, Final Return on the format as per Annexure-A to these regulations along with statement of compliance by all the directors including chief executive as per Annexure-A1 within fifteen days of the completion of the process of purchase.
- (2) The purchasing company shall not,-
- (a) apply for voluntary winding up within a period of twelve months of the close of the purchase period;
 - (b) make a purchase before the expiry of six months from the last date of subscription by shareholders in respect of any further issue of capital;
 - (c) be *ipso facto* converted into another kind of company after the purchase of shares in case number of members of the purchasing company is reduced below the minimum prescribed number for that kind of company:

Provided that the purchasing company shall follow all the requirements prescribed for conversion of status of the company under the relevant laws;

- (d) purchase its own shares if, as a result of the purchase, there would no longer be any member of the company holding shares.

Chapter IV
Miscellaneous

7. Power to give directions: - The Commission shall have the powers to issue directions to the purchasing company, any of its directors, officers, or any other person under section 510 of the Act to carry out the purposes of the Act and these regulations including but not limited to-

- (i) stopping the purchasing company at any stage from making the purchase or sale, as applicable;
- (ii) do or desist from doing such acts as the Commission may determine; and
- (iii) carry out such steps as are necessary to rectify the situation.

8. Penalty for contravention of Regulations: Whoever fails or refused to comply with, or contravenes any requirements of the regulations shall be punishable with penalty as provided under sub-section (2) of section 512 of the Act.

Annexure-A

[Section 88 and Regulation 6(1)(f)]

THE UNLISTED COMPANIES (BUY-BACK OF SHARES) REGULATIONS, 2023

FINAL RETURN

Part I

(Please complete in typescript or in bold block capitals.)

1.1 CUIIN (Registration Number)	<input type="text"/>	
1.2 Name of the Company	<input type="text"/>	
1.3 Fee Payment Details	1.3.1 Challan No. <input type="text"/>	1.3.2 Amount <input type="text"/>

Part II

2. Share Capital

2.1 Paid up capital (in Rupees before buy back)	<input type="text"/>
2.2 Number of shares purchased	<input type="text"/>
2.3 Paid up Capital (in Rupees after buy back)	<input type="text"/>

2.4 Source of funds utilized

(i) Distributable profit, and / or	Mention amount (Rs.)
(ii) Reserves, and/or	Mention amount (Rs.)
(iii) other resources (in case of startups in terms of first proviso to regulation 3(1))	Mention amount (Rs.)

2.5 Dates relevant to purchase (buy-back) of shares

Activity	DD-MM-YYYY
(i) Last purchase before present purchase (buy-back)	
(ii) Board of directors meeting held on	
(iii) Notice for general meeting issued on	
(iv) General meeting in which special resolution was passed	
(v) Completion of purchase process	
(vi) Cancellation of shares	

2.6 Dates relevant to Offer and Acceptance

(i) 1st Offer	DD-MM-YYYY
(ii) Offer Acceptance deadline	DD-MM-YYYY
(iii) 2nd Offer (if any)	DD-MM-YYYY
(iv) Offer Acceptance deadline	DD-MM-YYYY
<i>User may add additional rows in case of subsequent offers</i>	

2.7 Details of purchase (buy-back) of shares

(i) Total number of shares tendered/surrendered for purchase (Buy-back)	
(ii) Total number of shares accepted for purchase (buy-back)	
*Date-wise and shareholders wise breakup	<i>As per format given below</i>

*Date-wise and shareholders wise breakup

Date(s) of purchase / Buy-back of shares DD-MM-YYYY	Name of shareholder in full	Number of shares purchased	Class of shares purchased (Class A, Class B, Preferred: Participatory: Redeemable at company's option, Preferred: Participatory: Redeemable at Shareholders Option, Preferred: Non-Participatory: Non-Redeemable, Preferred: Non-Participatory: Redeemable at Shareholders Option, Any other Class, (please specify))	Purchase price/share	Number of shares held by shareholder, if any after buy-back of shares	CNIC No./NICOP/Passport No. of member /Registration Number, if any (in case of other than natural person) Please enter CNIC No. without (-)	Date of payment	Amount paid (Rs.)	Mode of payment
1	2	3	4	5	6	7	8	9	10
Ordinary Shares:									
Preference Shares:									

2.8 Names of shareholders and their shareholding after completion of process of buy-back:

S#	Folio #	Name	Address	CNIC/Passport No./CUIN No.	Nationality	No. of shares held
1	2	3	4	5	6	7

Part III

3.1 Declaration:

I do hereby solemnly and sincerely declare that the information provided in the form is:

- true and correct to the best of my knowledge, in consonance with the record as maintained by the Company and nothing has been concealed; and
- hereby reported after complying with and fulfilling all requirements under the relevant provisions of law, rules, regulations, directives, circulars and notifications whichever is applicable.

III - 1195

Pt. III, Rules & Regulations **Unlisted Cos (Buy-Back of Shares) Reg., 2023**

3.2 Name of Authorized Officer with designation/
Authorized Intermediary

--	--

3.3 Signatures

--

3.4 Registration No. of Authorized Intermediary,
if applicable

--

3.5 Date

Day	Month	Year

Encl:

- 1- Resolution(s) of Board of Directors recommending the purchase
- 2- Notice of meeting along with relevant attachments
- 3- Copy of special resolution, if not already submitted separately.
- 4- Statement of compliance by all Directors/CEO as per Annexure-A1

Annexure-A1

[Regulation 6(1)(f)]

STATEMENT OF COMPLIANCE BY ALL DIRECTORS & CEO

We, being the directors and the CEO of (name of the purchasing company), do hereby solemnly and sincerely state the:

- I) The Company is fully compliant with all applicable laws, rules and regulations;
- II) In case the company is engaged in any business activity which is subject to license or approval, it is compliant with the applicable laws;
- III) The Company has complied with the provisions of the Companies Act, 2017 as well as the Unlisted Companies (Buy-Back of Shares) Regulations, 2022 during the process of buy-back of shares of the Company.

That whatever has been stated above is true and correct to the best of our knowledge and belief.

(Signed by all the directors including CEO with names, Designations, residential addresses and CNIC numbers)

Date: _____

Place: _____

(To be printed on stamp paper of requisite value)

[Regulation 4(3)]

DECLARATION

We, being the directors/CEO of (name of the purchasing company), do hereby solemnly and sincerely declare that we have made a full inquiry into the affairs of the company and that, having done so, have formed the opinion that;

• the funds required for the purchase of shares are available with the purchasing company	
• there is no ground on which the purchasing company is unable to pay its debts.	
• barring any material unforeseen circumstances, or <i>force majeure</i> events, the purchasing company will remain solvent for the period of twelve months from the date of declaration.	

And we are fully aware/understand;

• of the fact that in case we make any false statement about any of the above matters, we shall be liable for civil as well as criminal consequences in terms of section 88 and 496 of the Companies Act, 2017.	
• that there is no shareholding or management dispute in the purchasing company which could result in material adverse effect on its business.	
• the purchasing company is not restricted by any condition of any kind, and if so, or has obtained the relevant approvals.	
• there is no valid binding contract, which the purchasing company is party to, which restricts the purchasing company from purchasing its own shares.	
• that whatever stated above is true and correct to the best of our knowledge and belief based on the facts and financial position known to us on the date of this declaration.	

Deponents

(Signed with names, Designations, residential addresses and CNIC numbers)

Date: _____

Place: _____

Verified/Attested by Class-I Magistrate /
Oath Commissioner / Notary Public Seal of Attesting Officer
