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PART II

Statutory Notifications (S. R. O.)

GOVERNMENT OF PAKISTAN

MINISTRY OF FINANCE

NOTIFICATION

Islamabad, the 24th January, 2020

S.R.O. 41(I)/2020.—In exercise of the powers conferred by section 70 of the Financial Institutions (Secured Transactions) Act, 2016 (XXXI of 2016), the Federal Government is pleased to make the following rules, namely:—

PART I

PRELIMINARY

1. **Short title and commencement.**—(1) These rules shall be called the Financial Institutions (Secured Transactions Registry) Rules, 2019.

(2) These rules shall come into force at once.

(71)

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[5075(2020)/Ex. Gaz.]

2. **Definitions.**—(1) In these rules, unless there is anything repugnant in the subject or context,—

- (a) **“Act”** means the Financial Institutions (Secured Transactions) Act, 2016 (XXXI of 2016);
- (b) **“Commission”** shall have the same meaning as assigned to it under the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997); and
- (c) **“constitutive document”**, in relation to an entity, means any instrument, as may be amended from time to time, pursuant to which such entity is formed or organised under applicable law and includes a contract of partnership, memorandum of association or instrument of trust.

(2) All other words and expressions used but not defined in these rules shall, unless there is anything repugnant in the subject or context, have the same meaning as assigned thereto them in the Act or the Electronic Transactions Ordinance, 2002 (LI of 2002).

PART II

SECURED TRANSACTIONS REGISTRY

3. **Functions and powers of the Registry.**—(1) The Registry shall perform the following functions, in addition to those assigned to it under the Act, namely,—

- (a) to administer and implement the Act and rules and regulations made thereunder as they relate to the Registry;
- (b) to manage, operate and maintain or cause the management, operation and maintenance of the register;
- (c) facilitate the registration of security interests in accordance with Part IV of the Act and rules and regulations issued thereunder;
- (d) to prepare an annual report providing an overview of the activities of the Registry;
- (e) to prepare policies for approval of the Federal Government in relation to the operation, management and administration of the Registry;

- (f) to conduct or arrange for training programs, seminars and workshops for financial institutions and the public to promote education and public awareness of the Act and the rules and regulations made thereunder as they relate to the Registry and registration of security interests, subject to the approval of the Finance Division where funds of the Federal Government are involved;
- (g) to prescribe requirements for the use of and means of authorizing users to access the register through regulations;
- (h) to co-ordinate and liaise with other Government agencies and regulatory authorities for the promotion, development and implementation of the Act; and
- (i) to perform all such functions as are necessary for or ancillary to the fullment of the objects of the Act.

(2) Subject to the provisions of the Act, the Registry shall exercise such powers as it may consider necessary or expedient to carry out its functions including but not limited to,—

- (a) lease, purchase, acquire, own, hold, improve, use or otherwise deal in and with any property both moveable and immovable;
- (b) sell, convey, mortgage, pledge, exchange or otherwise dispose of its property and assets;
- (c) charge, receive and utilize fees and charges as may be prescribed by regulations for rendering any service or providing any facility, information or data under this Act and the rules and regulations issued thereunder;
- (d) enter into contracts, execute instruments, incur liabilities and do all acts or things necessary for proper management and conduct of its operations; and
- (e) to prepare and issue regulations under section 72 of the Act; and
- (f) appoint officers and other staff and such technical and professional advisers, experts and consultants as it considers necessary for the efficient performance of its functions in accordance with such procedure and on such terms and conditions as may be prescribed.

4. **Budget, registry fund and accounts.**—The Registry shall on an annual basis, draw up a budget for the following year showing the anticipated income and expenditure to be incurred by the Registry.

5. **Registrar.**—The registrar appointed in accordance with the Act and rules made thereunder shall be the head of the Registry and shall perform all powers and functions assigned to him under the Act.

6. **Licence for operating and maintaining the register.**—The entity may outsource any functions of operating and maintaining the register or other functions of the Registry in respect of the register as per Act.

PART III

SECURED TRANSACTIONS REGISTER

7. **Administrative role of the Registry.**—(1) The Registry shall not,—

- (a) conduct any scrutiny of the contents of a statement or search request to ensure that the particulars are complete, accurate or legally sufficient; or
- (b) except as otherwise provided in Rule 26, make any changes to the contents of a statement or search request.

(2) The Registry shall not be responsible for,—

- (a) changes, omissions or corruption of electronically transmitted particulars and other information which occurred prior to its receipt;
- (b) ensuring that the particulars and other information is complete, accurate and legally sufficient;
- (c) inaccuracies or misrepresentations revealed in a search of the register; or
- (d) the validity of the security agreement between the secured creditor and the entity.

8. **Forms of statements and reports.**—(1) The statements for the purposes of sections 23, 24 and 26 of the Act shall be in the form and nature of electronic documents to be filled in and filed in the register electronically.

(2) The Regulations may include forms on statements in the nature of screenshots of electronic screens.

(3) The Regulations may also include forms other than statements.

PART IV

PROVISIONS RELATING TO REGISTRATIONS

9. **Language of particulars in a statement.**—(1) With the exception of the names and addresses of the entity and secured creditor, the particulars contained in a financing statement and any modification statement, must be expressed in English or Urdu.

(2) Notwithstanding sub-rule (1), the name of the entity and the secured creditor in a financing statement and any modification statement must be expressed in Latin characters.

10. **Name of the entity.**—(1) Where a name of an entity is required to be stated in a statement, the name shall be the current name of the entity to be determined in accordance with this Rule.

(2) Where the entity is a natural person other than a foreign national, the entity's name is the current name as stated in the National Identity Card or the National Identity Card for Overseas Pakistanis, as applicable.

(3) Where the entity is a natural person who is a foreign national, the entity's name is the current name as stated in the valid passport.

(4) Where an entity is a sole proprietorship, the entity's name is the name as is currently registered with the relevant Government agency, provided that the financing statement shall also identify the current name of the sole proprietor in accordance with sub-rule (1) or (2), as applicable.

(5) Where an entity is a partnership, the entity's name is:

- (a) in the case of a registered partnership, the name as is currently registered with the relevant Government agency; or
- (b) in the case of an unregistered partnership, the current name as stated in the constitutive document:

Provided that the financing statement shall also identify the current name of the partner(s) of the partnership who is authorised to create on behalf of the firm the security interest in favor of the secured creditor.

- (6) Where an entity is—
- (a) a non-governmental organization registered under any federal or provincial law for the registration of a non-governmental organization;
 - (b) a cooperative society registered under any federal or provincial law for the registration of a cooperative society;
 - (c) a society registered under any federal or provincial laws for the registration of a society; or
 - (d) a limited liability partnership registered under the Limited Liability Partnership Act, 2017 (XV of 2017) or any other law for the registration of a limited liability partnership;
 - (e) the entity's name is the name as is currently registered with the relevant Government agency.
- (7) Where an entity is a trust created under the Trust Act, 1882 (II of 1882), the entity's name is,—
- (a) in the case of a registered trust, the name as is currently registered with the relevant Government agency; or
 - (b) in the case of an unregistered trust, the current name as stated in the constitutive document.
- (8) Where an entity is a body corporate established pursuant to a statute, the entity's name is the current name as stated in the statute establishing the said entity.
- (9) If an entity is formed otherwise than under sub-rules (3) to (8), the name of the entity is,—
- (a) in the case of an entity requiring registration with a Government agency, the name as is currently registered with the relevant Government agency; or
 - (b) in any other case, the current name as stated in the constitutive document.

(10) A statement that provides the entity's trade name does not sufficiently provide the name of the entity.

11. **Name of the secured creditor.**—The financing statement may, for the purposes of clause (e) of sub-section (2) of section 23 of the Act, identify the security trustee or agent for the secured creditors.

12. **Address of the entity or secured creditor.**—Where an address of an entity or secured creditor is required to be stated in a statement,—

- (a) the residential address must be provided in the case of a natural person; and
- (b) the address of the principal or registered office must be provided in the case of any entity other than a natural person.

13. **Description of collateral.**—(1) For the purposes of clause (c) of sub-section (2) of Section 6 and Clause (h) of Sub-Section (2) of section 23 of the Act, a description of collateral is sufficient, whether or not it is specific, if it reasonably allows identification of the collateral,—

- (a) in one or more of the ways specified under sub-rule (2); or
- (b) in the case of a security interest over all the assets of the entity, by stating that the security interest is over all the present and after-acquired property of the entity.

(2) A description of the collateral reasonably allows identification of such collateral if it identifies the collateral by,—

- (a) specific listing;
- (b) category;
- (c) a type of collateral defined in the Act; or
- (d) quantity.

14. **Special provisions on description of motor vehicle in a statement.**—A motor vehicle must be described by the vehicle registration number unless the motor vehicle is held as inventory.

15. **Statistical information.**—(1) In addition to the particulars of a security interest specified in the Act, a secured creditor may be required to provide in a

statement such additional particulars for statistical purposes as may be prescribed by regulations.

(2) A statement shall not be registered if it does not provide the additional particulars under sub-rule (1).

(3) Any additional particulars provided in statements under sub-rule (1) shall not be available to searchers.

16. **Single financing statement.**—A single financing statement may relate to security interests created by an entity under one or more security agreements with the same secured creditor.

17. **Modification statement.**—A modification statement may change one or more particulars in the registered financing statement to which it relates.

18. **Verification statement.**—The verification statement shall be in the nature of an electronic document and may be issued or generated electronically by the register in the same form in which the financing statement was filed in the register.

19. **Effect of errors in particulars.**—(1) Any errors in the following particulars shall not render the registered financing statement ineffective under section 30 of the Act,—

- (a) address of the entity;
- (b) type of entity;
- (c) name and address of the secured creditor; or
- (d) additional particulars for statistical purposes under Rule 15.

(2) An error in the particulars of an entity under clause (a) of subsection (1) of section 30 of the Act shall not render the registered financing statement ineffective with respect to other entities adequately identified in the same registered financing statement.

(3) A registered financing statement shall be ineffective if the name of an entity other than a natural person, sole proprietorship, or partnership, as prescribed in sub-rules (6) to (9) of Rule 10, is stated incorrectly such that a search of the register would not retrieve the registered financing statement.

20. Authorisation to file modification or termination statement and its effect.—(1) Subject to sub-rule (2), only the person identified in a registered financing statement as the secured creditor may file a modification or termination statement in the register relating to that financing statement.

(2) After filing of a modification statement changing the person identified in a registered financing statement as the secured creditor, only the person identified in the registered modification statement as the new secured creditor may file a modification or termination statement relating to such registered financing statement.

(3) A registered modification or termination statement shall be ineffective if it has been filed without the authorization of the person entitled to file it in accordance with this Rule.

21. Legal effect of transfer of the security interest.—A transfer of all or part of the security interest is effective whether or not a modification statement relating to that transfer has been filed pursuant to section 24 of the Act.

22. Perfection of a security interest in non-cash proceeds.—Pursuant to sub-section (2) of section 15 of the Act, a security interest in non-cash proceeds is perfected,—

- (a) for twenty working days after the non-cash proceeds arise; and
- (b) thereafter, only if the security interest in the non-cash proceeds is perfected through registration before the expiry of the time specified in sub-rule (a).

23. Transitional registrations.—A prior security interest as defined in clause (a) of sub-section (1) of section 73 of the Act may be perfected through registration in accordance with Part IV of the Act read with rules and regulations issued thereunder.

24. Rectification of register.—An entity may, pursuant to sub-section (1) of section 31 of the Act, give a written demand to the secured creditor to reduce the maximum amount secured by the security interest if,—

- (a) the maximum amount secured as stated in the registered financing statement is higher than the maximum amount secured as stated in the security agreement to which such registered financing statement relates; or

- (b) the security agreement to which the registered financing statement relates has been revised to reduce the maximum amount secured by the security interest as stated in such security agreement.

25. **Search logic.**—(1) Where the entity is a natural person, the Registry shall provide for the register to be searched by reference to the name of the entity along with the National Identity Card, National Identity Card for Overseas Pakistanis or a passport number that determines the effectiveness of a registered financing statement under Section 30 of the Act.

(2) Subject to sub-rule (1), where the entity is other than a natural person, the Registry shall provide for the register to be searched by reference to the name of the entity.

(3) Upon receipt of a request in the form and manner prescribed in the regulations, and against one of the criteria set out in sub-section (2) of section 33 of the Act, the Registry shall provide a search report in the nature of an electronic document issued or generated by the register electronically and that indicates the date and time when the search was performed and,—

- (a) sets out all registered statements that contain particulars which exactly match the search criterion used; or
- (b) indicates that no registered statement contains particulars which exactly match the search criterion used.

26. **Modifications and terminations by the registrar.**—(1) Except as provided in section 31 of the Act, the registrar shall not amend or delete particulars and information contained in the register.

(2) Any modification or termination statement filed by the registrar pursuant to the Act and rules and regulations issued thereunder shall be identified as such.

(3) The registrar shall file a modification or termination statement, as applicable, pursuant to a court order identifying the nature of such statement.

27. **Correction of errors made by the Registry.**—(1) After discovering that an error or omission has been made in entering into the register the particulars contained in a registered statement, or a registered statement or particulars contained therein have been erroneously removed from the register, the registrar shall, without any delay, file a statement to correct the errors or omission, or restore the erroneously removed registered statement or particulars contained therein, and send a copy of the corrected or restored particulars in the registered statement to the person identified in such statement as the secured creditor.

(2) Within ten working days after the person receives a copy of the corrected or restored particulars, that person must send it to the person identified in the statement as the entity.

(3) The registered statement remains effective as if the error or omission had never been made, or the registered statement or particulars contained therein had never been erroneously removed.

PART V

OTHER PROVISIONS

28. **Description of secured obligations.**—(1) A security interest may secure one or more obligations of any type, present or future, determined or determinable, conditional or unconditional, fixed or fluctuating.

(2) For the purposes of clause (b) of sub-section (2) of section 6 of the Act, a secured obligation may be described in a security agreement generically and by reference to the maximum amount secured by the security interest.

29. **Special priority rules.**—Section 42 of the Act applies to any tangible movable property that is acquired by the entity to be used or intended to be used primarily in the operation of its business.

30. **Finance lease.**—For the purposes of the Act, a lease shall be a finance lease if it is classified as such under the International Accounting Standards or International Financial Reporting Standards, as applicable in Pakistan.

31. **Enforcement of security interests.**—While enforcing security interests in accordance with section 59 of the Act, the secured creditor may realize the amount secured or part thereof through public auction or private sale.

[File No.3(2)Inv-V/2019.]

RIDA NOOR,
Section Officer (Inv.-V).