

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Islamabad, the 14th December, 1999

NOTIFICATION

S.R.O. 1338(I)/99.- In exercise of the powers conferred by section [508 of the Companies Act, 2017 (XIX of 2017)]¹, read with clause (b) of section 43 of the Securities and Exchange Commission of Pakistan Act, 1997 [(XLII of 1997) and section 175 of the Securities Act, 2015 (III of 2015)]², the Securities and Exchange [Commission of Pakistan]³ hereby makes the following rules, the same having been published previously as required by the proviso to sub-section (1) of the said section [508]⁴, namely:-

THE COMPANIES (ASSET BACKED SECURITIZATION) RULES, 1999

1. **Short title [commencement and application]**⁵.-- (1) These rules may be called the Companies (Asset Backed Securitization) Rules, 1999.
 - (2) They shall come into force at once.
 - [(3) They shall apply to offer of debt securities or shariah compliant securities by special purpose vehicles under securitization process.
 - (4) Special purpose vehicles owned or controlled by the Federal Government or Provincial Government may also adopt these rules to such extent in accordance with applicable law.]⁶
2. **Definitions.**-- (1) In these rules, unless there is anything repugnant in the subject or context.-

¹ Substituted for the text "506 of the Companies Ordinance, 1984 (XLVII of 1984)" vide S.R.O. 520 (I)/2022 dated April 14, 2022.

² Inserted vide S.R.O. 520 (I)/2022 dated April 14, 2022.

³ Substituted for the words "Policy Board" vide S.R.O.520 (I)/2022 dated April 14, 2022.

⁴ Substituted for the figure "506" vide S.R.O. 520 (I)/2022 dated April 14, 2022.

⁵ Substituted for the words "and commencement" vide S.R.O. 520 (I)/2022 dated April 14, 2022.

⁶ Inserted vide S.R.O. 520 (I)/2022 dated April 14, 2022.

- (a) "Act" means the Securities Act, 2015 (III of 2015);
- (aa)]⁷ "Commission" means the Securities and Exchange Commission of Pakistan.
- (b) [Omitted]⁸
- (c) "constitutive documents" means the principal documents governing the formation of a Special Purpose Vehicle;
- (d) ["future receivables" means all such receivables, against which income may accrue or arise at a future date, meeting such securitized asset criteria as may be specified by the Commission including but not limited to rights, obligations, claims etc. of the parties involved and any other matters arising out of or connected therewith;]⁹
- (e) "investor" means a person holding any asset backed securities issued by a Special Purpose Vehicle;
- [(ea) "issue" means offer of securities by special purpose vehicle;]¹⁰
- (f) ["offering document" means any documents including a prospectus that invites subscription for issue of securities by special purpose vehicle;]¹¹

⁷ Inserted and renumbered vide S.R.O. 520 (I)/2022 dated April 14, 2022.

⁸ Deleted the text "(b) "connected person" in relation to a company means,- (i) any person or company beneficially owning, directly or indirectly, ten per cent or more of the share capital of that company or able to exercise directly, or indirectly, ten per cent or more of the voting rights in that company; or (ii) any person or company controlled by a person who meets one or both of the descriptions given in sub-clause (i); or (iii) any member of the group of which that company forms part; or (iv) any director or officer of that company or of any of its connected persons specified in sub-clauses (i), (ii), or (iii);" vide S.R.O. 520 (I)/2022 dated April 14, 2022.

⁹ Substituted for the text "future receivables" includes all such receivables against which income may accrue or arise at a future date;" vide S.R.O. 520 (I)/2022 dated April 14, 2022.

¹⁰ Inserted vide S.R.O. 520 (I)/2022 dated April 14, 2022.

¹¹Substituted for the text "offering document" means documents containing information on a security calculated to invite offers for the purchase of such security;" vide S.R.O. 520 (I)/2022 dated April 14, 2022.

- (g) [Omitted]¹²
 - (h) ["Originator" means an entity which transfers its assets to a special purpose vehicle in a securitization transaction;]¹³
 - (i) ["Securitization" means a process whereby any special purpose vehicle raises funds through issuance of debt securities, or shariah compliant securities including Sukuk under these rules and uses such funds by making payment to the originator and through such process acquires the title, property or right in assets specified by the Commission;]¹⁴
 - (j) "Special Purpose Vehicle" means a special purpose vehicle registered by the Commission for the purpose of Securitization; [and
 - (k) "Servicer" means an entity appointed by the special purpose vehicle for the collection or management of the asset pool and for making allocations or distributions to holders of the securitized instrument in accordance with the regulations.]¹⁵
- (2) All other terms and expressions used but not defined in these rules shall have the same meanings as are assigned to them in the [Act, the Companies Act, 2017 (XIX of 2017) or the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997)]¹⁶.

3. Prohibition to commence business without registration.-- No person shall commence business as a Special Purpose Vehicle unless it is registered with the Commission under these rules.

¹² Deleted the words "Ordinance" means the Companies Ordinance, 1984 (XLVII of 1984);" vide S.R.O. 520 (I)/2022 dated April 14, 2022.

¹³ Substituted for the text "Originator" means a person who transfers to a Special Purpose Vehicle any assets in the form of present or future receivables as a consequence of Securitization;" vide S.R.O. 520 (I)/2022 dated April 14, 2022.

¹⁴ Substituted for the text "Securitization" means a process whereby any Special Purpose Vehicle raises funds by issue of Term Finance Certificates or any other instruments with the approval of the Commission, for such purpose and uses such funds by making payment to the Originator and through such process acquires the title, property or right in the receivables or other assets in the form of actionable claims;" vide S.R.O. 520 (I)/2022 dated April 14, 2022.

¹⁵ Inserted vide S.R.O. 520 (I)/2022 dated April 14, 2022.

¹⁶ Substituted for the word "Ordinance" vide S.R.O. 520 (I)/2022 dated April 14, 2022.

4. **Eligibility for registration.--** A person proposing to commence business as a special purpose vehicle shall be eligible for registration under these rules, if-
- (a) it is registered as a public company under the Companies Act, 2017 (XIX of 2017), having a paid-up capital as specified by the Commission;
 - (b) it is a body corporate; and
 - (c) its promoters or sponsors, directors, chief executive, officer or employee fulfil the fit and proper criteria as specified by the Commission;
 - (d) it is a specialized trust carrying out any regulated activity under the administered legislation of the Commission.]¹⁷
5. **Registration.--** (1) A person eligible for registration as Special Purpose Vehicle may make an application [alongwith a fee of one hundred thousand rupees]¹⁸ to the Commission for registration under these rules in such form and with such documents, as the Commission may [specify]¹⁹.
- (2) The Commission, if it is satisfied after making such inquiry and after obtaining such information as may be considered necessary, may grant a certificate of registration to such person on such conditions as may be deemed necessary.
- [(3) Registered special purpose vehicle shall comply with the conditions for operation and obligations of special purpose vehicle as specified by the Commission.]²⁰

¹⁷ Substituted for the text "Eligibility for registration.-- A person proposing to commence business as a Special Purpose Vehicle shall be eligible for registration under these rules if,- (a) (i) it is registered as a public limited company under the Ordinance having a paid up capital of not less than one hundred thousand rupees; or (ii) it is a trust duly formed under the Trusts Act, 1882 (II of 1882); or (iii) it is a body corporate formed under any law for the time being in force and owned or controlled, whether directly or through a company or corporation, by the Federal Government or a Provincial Government; (b) no director, officer or employee of such person has been adjudged as insolvent or has suspended payment or has compounded with his creditors or has been convicted of fraud or breach of trust or of an offence involving moral turpitude; and (c) the promoters, directors and trustees of such person are, in the opinion of the Commission, persons of means and integrity and have special knowledge and experience of matters to be dealt with by a Special Purpose Vehicle." vide S.R.O. 520 (I)/2022 dated April 14, 2022.

¹⁸ Inserted vide S.R.O 680(I)/2010 dated July 22, 2010.

¹⁹ Substituted for the word "notify" vide S.R.O. 520 (I)/2022 dated April 14, 2022.

²⁰ Inserted vide S.R.O. 520 (I)/2022 dated April 14, 2022.

6. **Cancellation of registration.--** (1) Where the Commission is of the opinion that-

- (a) a Special Purpose Vehicle has contravened or failed to comply with any provisions of []²¹ these rules or has failed or neglected to carry out its duties in accordance with law; or
- (b) if a Special Purpose Vehicle fails to [issue the debt security or shariah compliant security including sukuk]²² within such time frame and in such manner as may be specified by the Commission while granting the certificate of registration,

and the Commission is satisfied that it would be in the public interest so to do, the Commission may on its own motion, or on the application of the investors holding not less than ten percent of the securities issued by such Special Purpose Vehicle, by order in writing, cancel the registration of the Special Purpose Vehicle:

Provided that no such order shall be made without giving the Special Purpose Vehicle an opportunity of being heard [:

Provided further that a special purpose vehicle may also apply for cancellation of its registration under exceptional circumstances.]²³

(2) [Omitted]²⁴

(3) If the registration of a Special Purpose Vehicle is cancelled under sub-rule (1), []²⁵ the Commission shall appoint an administrator to manage the business of the Special Purpose Vehicle.

²¹ Deleted the words " the Ordinance, or has otherwise neglected or failed to comply with any requirement of" vide S.R.O. 520 (I)/2022 dated April 14, 2022.

²² Substituted for the words "make a public offering" vide S.R.O. 520 (I)/2022 dated April 14, 2022.

²³ Inserted vide S.R.O. 520 (I)/2022 dated April 14, 2022.

²⁴ Deleted the text "If a Special Purpose Vehicle fails to make a public offering within such time frame as may be specified by the Commission while granting the certificate of registration, the Commission may, after affording a reasonable opportunity of be heard by the such Special Purpose Vehicle, cancel its registration vide S.R.O. 520 (I)/2022 dated April 14, 2022.

²⁵ Deleted the text "or, as the case may be, under sub-rule (2)" vide S.R.O. 520 (I)/2022 dated April 14, 2022.

- [6A. **Listing.--** (1) A special purpose vehicle shall list its debt securities or shariah compliant securities offered to the public.
- 6B **Modes of fund raising.--** A special purpose vehicle may raise funds through issuance of debt securities or shariah compliant securities as specified by the Commission.]²⁶
7. [Omitted] ²⁷
8. [Omitted] ²⁸
9. [Omitted] ²⁹
10. [Omitted] ³⁰

²⁶ Inserted vide S.R.O. 520 (I)/2022 dated April 14, 2022.

²⁷ Deleted the text "Conditions of Operation.-- No Special Purpose Vehicle shall, -- (a) merge with, acquire or take over any other company or business, unless it has obtained the prior approval of the Commission in writing to the scheme of such merger, acquisition or take-over; (b) pledge any of the assets held or beneficially owned by such Special Purpose Vehicle except for the benefit of the investors; (c) make a loan or advance money to any person except in connection with its normal business; (d) participate in a joint account with others in any transaction; (e) apply any part of its assets to real estate except property for its own use; (f) make any investment with the purpose of having the effect of vesting the management, or control, in the Special Purpose Vehicle; and (g) give guarantee, indemnity or security for any liability of a third party;" vide S.R.O. 520 (I)/2022 dated April 14, 2022.

²⁸ Deleted the text "Obligations of Special Purpose Vehicle.-- A Special Purpose Vehicle shall – (a) be obliged to manage its assets in the interest of the investors in good faith and to the best of its ability and without gaining any undue advantage for itself or any of its related parties, connected persons or its officers; (b) be responsible for the acts and omissions of all persons to whom it may delegate any of its functions as manager as if they were its own acts and omissions; (c) keep at its registered office, proper books of accounts and records to enable a complete and accurate view to be formed of its assets, liabilities, income and expenditure; (d) prepare and transmit its annual report, together with a copy of the balance sheet and profit and loss account, prepared in compliance with the requirements set out in the Ordinance and the Schedules thereto, and the auditor's report within three months of closing of the accounting period to the investors; (e) within two months of the close of the first half of its year of account, prepare and transmit to the investors and the Commission a profit and loss account for, and balance sheet as at the end of that half year, whether audited or otherwise; (f) keep a register of investors at its registered office; (g) appoint an auditor or auditors who shall be a chartered accountant within the meaning of the Chartered Accountants Ordinance, 1961 (X of 1961), in accordance with the relevant provisions of the Ordinance; provided that the auditors so appointed shall be a person other than the auditor of the originator. (h) furnish a copy of the annual report together with copies of its balance sheet, profit and loss account and the auditor's report to the Commission within three months of the close of the accounting period together with a statement containing the following information, namely; (i) total number of investors; and (ii) particulars of its directors, trustees or executives as the case may be." vide S.R.O. 520 (I)/2022 dated April 14, 2022.

²⁹ Deleted the text "Advertisement and invitations.-- (1) Advertisements and other invitations to the public to invest in a scheme, including public announcements, shall be submitted to the Commission for approval prior to their issue. (2) The approval so granted may be varied or withdrawn by the Commission after giving an opportunity of being heard to the Special Purpose Vehicle." vide S.R.O. 520 (I)/2022 dated April 14, 2022.

³⁰ Deleted the text "Special Purpose Vehicle and the Originator to be independent.-- The Originator shall not be a connected person to the Special Purpose Vehicle." vide S.R.O. 520 (I)/2022 dated April 14, 2022.

11. **Guidelines [directive or regulations]**³¹.-- The Commission may, from time to time, issue [regulations, directives or]³² guidelines for carrying on the business of Securitization.

[12. **Disclosures in the offering document.**-- Offering document shall at least contain the information as specified by the Commission.

13. **Liquidation or winding up.**-- A special purpose vehicle, upon payment of all its obligations under the issue including redemption amount, may be liquidated or wound up as per the requirements of Companies Act, 2017 (XIX of 2017).

14. **Reporting.**-- The special purpose vehicle shall file such reports and furnish such documents and information to the Commission or to the investors, as specified by the Commission from time to time.]³³

No.3(3)SECP/SM/99

(HIZBULLAH SIDDIQUI)
Deputy Chief

³¹ Inserted vide S.R.O. 520 (I)/2022 dated April 14, 2022.

³² Inserted vide S.R.O. 520 (I)/2022 dated April 14, 2022.

³³ Inserted vide S.R.O. 520 (I)/2022 dated April 14, 2022.