

GOVERNMENT OF PAKISTAN
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Islamabad, the June 11h, 2018

NOTIFICATION

S.R.O. 733 (I)/2018. In exercise of the powers conferred by section 512 read with section 42 and section 43 of the Companies Act, 2017 (XIX of 2017), the Securities and Exchange Commission of Pakistan is pleased to notify the following Associations with Charitable and Not for Profit Objects Regulations, 2018, the same having been previously published vide notification S.R.O 450 (1)/2017 dated June 07, 2017, namely: -

CHAPTER I

PRELIMINARY

1. Short title, commencement and application. - (1) These Regulations shall be called the Associations with Charitable and Not for Profit Objects Regulations, 2018.

(2) They shall come into force at once.

(3) These regulations shall apply to companies licensed under section 42 of the company law and shall not apply to trade organizations licenced under the Trade Organizations Act, 2013 (II of 2013).

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

- (i) "Act" means the Companies Act, 2017 (XIX of 2017);
- (ii) "Annexure" means annexures appended to these regulations;
- (iii) "association" for the purpose of these regulations means a group of persons united for a common object desirous of obtaining license under section 42 of the Act;
- (iv) "authorized intermediary" shall have the same meaning as assigned to it under the Intermediaries (Registration) Regulations, 2017;
- (v) "authorized officer" for the purpose of these regulations shall include a chief executive officer, director, secretary and chief financial officer of the company authorized by the board of directors of the company to sign a document or proceeding requiring authentication by the company;
- (vi) "benefits" means all monetary and non-monetary favors of any kind received from the company directly or indirectly including but not limited to company maintained car, medical plan, house rent, loans and advances but does not include official travelling reimbursements, boarding and lodging expenses incurred on attending official meetings or expenses incurred in attending office as per entitlement ¹[or any meeting fee for attending the meetings of the board or a committee of board as determined by the board of directors];
- (vii) "close relative" means spouse(s), siblings and their children, lineal ascendants and descendants;
- (viii) "donation" means contribution whether in cash or in kind, in the form of charity, grant, aid, contribution, gift, assistance, subsidy or any other form, received directly or indirectly, from any source whether local or foreign, for the purpose of achieving the objects of the company ;
- (ix) "Form" means a form appended to these regulations;

¹ Inserted through SRO 0131 dated 01-02-2021

- (x) " promoter" means a person named as subscriber to the Memorandum of Association or member of Association who has applied for the grant of a license under section 42 of the Act; and
- (xi) " remuneration" means reward or compensation for employment in the form of pay, salary or wage including all other perquisites and non-cash incentives but does not include ²[meeting fee for attending meetings of board or committee of board and].

(2) Words and expressions used but not defined in these regulations shall have the same meaning as assigned to them in the Act, Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997) and any rules made thereunder.

3. Compliance by existing companies.- (1) All companies licensed under section 42 of the company law at the time of coming into force of these regulations, shall comply with all the requirements of these regulations.

(2) The provisions of these regulations shall have effect notwithstanding anything contained in the memorandum or articles of a company, or in any contract or agreement executed by it, or in any resolution passed by the company in general meeting or by its directors, whether the same be registered, executed or passed, as the case may be, before or after coming into force of the said provisions and any provision contained in the memorandum, articles, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the aforesaid provisions of these regulations, become or be void, as the case may be.

CHAPTER II

LICENSE

4. Application and procedure for grant of a license.- (1) An association desirous of obtaining a license under section 42 of the Act shall make an application to the Commission in the manner as specified in **NFP Form 1** along with all supporting documents as specified therein through an authorized promoter or authorized intermediary.

(2) An application for license under sub-regulation (1) may be made for promotion of single or multiple objects as provided in section 42 of the Act.

(3) Where an association applies for a license for the promotion of single object, one of the promoters shall have adequate experience in the field of proposed object.

(4) Where an association applies for a licence for the promotion of multiple objects, it shall have at least one promoter in each field of the proposed objects who possesses adequate experience in that field so that all the promoters or directors collectively have sufficient experience related to each object.

5. Grant of license.- (1) The Commission, while considering the application for grant of license under regulation 4, may make such enquiry and obtain such other information or clarification as it may deem necessary.

(2) The Commission may, on being satisfied that the promoters, proposed directors and proposed chief executive officer of an association comply with the fit and proper criteria specified in regulation 10, that all other requirements for the grant of a license have been fulfilled, and it shall be in the public interest so to do, may grant a license under section 42 of the Act to the association in the manner as provided in **NFP Annexure 1**, subject to such conditions as it may

² Substituted vide SRO 0131 dated 01-02-2021

deem fit to impose .

(3) ³[Omitted]:

Provided that the companies which were granted license for a period of five (5) years prior to notification of these regulations shall apply for renewal of license after expiry of term specified in their existing license.

(4) In case of refusal to grant the license, the Commission shall issue an order of refusal:

Provided that the Commission before issuing refusal order shall provide an opportunity of being heard to the applicant.

6. Incorporation of association.- (1) The association which has been granted a license by the Commission under regulation 5, shall apply for its incorporation as a public limited company under the provisions of the Act within sixty (60) days of the date of issuance of such license:

Provided that the Commission may, under special circumstances, on an application made by the promoters, extend such time as deemed appropriate in the circumstances.

(2) The license granted to an association under section 42 may be revoked by the Commission if the association does not apply for its incorporation as a company under the provisions of the Act within the time period as provided in sub-regulation (1) or such time as extended by the Commission:

Provided that before a license is so revoked, the Commission shall give an opportunity of being heard to the association against the revocation .

7. Conditions applicable to section 42 companies.- In particular and without prejudice to the generality of the powers of the Commission under section 42 of the Act and regulation 5 of these regulations, a license may be granted subject to the following conditions, namely,-

- (i) the conditions imposed under these regulations or any other additional conditions imposed by the Commission shall be deemed to be included in the memorandum of association of the company;
- (ii) the company shall utilize all its money, property, donations or income or any part thereof solely for promoting its objects'

⁴[Omitted]

- (iii) It shall be registered as a public limited company having at least three promoters;
- (iv) the limit of liability for each of its members shall not be less than one hundred thousand rupees or such other amount as may be notified by the Commission;
- (v) each promoter shall undertake to donate a reasonable amount but not less than two hundred thousand rupees as start-up donation or such other amount as maybe required by the Commission:

Provided that this requirement shall not be applicable in case of a promoter representing or nominated by an entity or by Government or an institution or authority

³ Omitted through SRO 1574 dtd 29-11-2021

⁴ Omitted through SRO 1574 dated 29-11-2021

or other statutory body of the Federal or Provincial Government(s) and in such case, the start-up donation shall be contributed by the said entity, Government, institution, authority or statutory body as the case may be;

- (vi) ⁵[The directors and the chief executive officer shall be entitled for reimbursement or payment of actual expenses incurred by them for attending meetings and they may also receive fee for attending meetings of the board or a committee of board, as determined by the board: Provided that the directors' report as attached to the financial statements of Association shall disclose the payment of meeting fee and reimbursement of actual expenses incurred by each director including chief executive for attending meetings of board and committees of board: Provided further that the board, in the case of public sector company, shall also comply with all applicable laws, instructions and policies of the relevant line ministry, if any, while approving amount of meeting fee for attending meetings of board and committee of the board;".];
- (vii) payment of remuneration and other benefits shall be allowed only to the chief executive officer and directors who are non-members and are in the whole-time employment of the company:

Provided that this requirement shall not be applicable on the chief executive officer and directors who are members and are in the whole-time employment of non-bank microfinance company licensed under the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003;

- (viii) payment of remuneration or other benefits by the company or its subsidiary entity for services or otherwise to members of the company or to their close relatives whether holding an office in the company or its subsidiary or not, shall be prohibited:

Provided that the prohibition shall continue to apply for a period of one year after a member quits from the membership of the company;

- (ix) ⁶[the company may alter its Memorandum and Articles of Association subject to compliance of relevant provisions of the Act;]
- (x) patronage of any government or authority or renowned personalities and organizations whether local or foreign, express or implied, shall not be claimed unless such person has signified its consent thereto in writing;
- (xi) the company shall not engage in any activities to function as a trade organization;
- (xii) the company shall not exploit or offend the religious susceptibilities of the people;
- (xiii) the company shall not, directly or indirectly, participate in any political campaign for elective public office or other political activities akin to those of a political party or contribute any funds or resources to any political party or any individual or body for any such purpose;
- (xiv) ⁷[Omitted];

⁵ Substituted through SRO 0131 dated 01-02-2021

⁶ Substituted through SRO 1574 dated 29-11-2021

⁷ Omitted through SRO 1574 dated 29-11-2021

- (xv) the company shall not admit any new member unless he meets the fit and proper criteria as contained in these regulations:

Provided that this condition shall not be applicable on members representing or nominated by Government or an institution or authority or other statutory body of the Federal or Provincial Government(s);

- (xvi) ⁸[the company shall appoint such directors and chief executive officer who meet the fit and proper criteria as specified under these regulations:

Provided that in the case of appointment/re-appointment/election/re-election of directors and chief executive officer, the company: -

- (a) shall obtain an affidavit from the incoming director or the chief executive officer confirming that he/she meets the fit and proper criteria in terms of these regulations; and
- (b) while notifying such appointment/reappointment/election/re-election of directors and chief executive officer on specified form, shall also file an affidavit on stamp paper with the registrar duly signed by the chief executive officer or authorized director, attested by an Oath Commissioner and witnessed, affirming that the fit and proper criteria as mentioned in these regulations has been assessed by the company and that the appointed/reappointed/elected/re-elected chief executive officer or directors meet the criteria as mentioned in these regulations:

Provided further that this condition shall not be applicable on nominees of Government or an institution or authority or other statutory body of the Federal or Provincial Government(s):

Provided also that this requirement shall not be applicable on the chief executive officer and directors of a non-bank microfinance company licensed under the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003 as such persons shall be required to comply with the fit and proper criteria specified in Non-Banking Finance Companies and Notified Entities Regulations, 2008; ”

- (xvii) ⁹[The Company may make investment, whatsoever, in any of its associated companies or associated undertakings subject to compliance of the requirements of section 199 of the Act and the regulations made thereunder. The Board shall also frame and follow a broad policy specifying mechanism for such investments and shall carry out due diligence before making such investment and shall also disclose interest of directors of the company, if any];
- (xviii) the company shall state with its name, the phrase "A company set up under section 42 of the Companies Act, 2017", in all its letterheads, documents, signboards, and all other modes of communication;
- (xix) the income and any profits of the company, shall be applied solely towards the promotion of objects of the company and no portion thereof shall be distributed,

⁸ Substituted through SRO 1574 dated 29-11-2021

⁹ Substituted through SRO 1574 dated 29-11-2021

paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to the members of the company or their close relatives;

- (xx) the company shall close its accounts on 30th of June each year;
- (xxi) notwithstanding anything stated in any object clause, the company shall obtain such other licenses, permissions, or approvals of the relevant public authorities as may be required under any relevant statutory regulations and laws for the time being in force, to carry out any specific object;
- (xxii) the company shall not appeal, solicit, receive or accept donations from foreign sources except with the prior permission, clearance or approval from the relevant authorities as may be required under any law or specified by the Government;
- (xxiii) ¹⁰[the company shall receive all funds, grants, contributions and donations (except funds, grants, contributions and donations received in kind) through proper banking channels: Provided that amounts equivalent to or less than twenty thousand rupees can be received in cash for which proper entries in the books and records of donor shall be maintained by the Company and such amount shall be deposited not later than 3 working days of the receipt, in the bank account of the company];
- (xxiv) the company shall ensure that the donations received and the charitable assets are utilized exclusively for charitable purposes and are not utilized or diverted to the benefit of the entities and individuals designated under the United Nations Security Council's (UNSC) sanctions list as maintained and periodically updated on UNSC's website;
- (xxv) the company shall ensure that a system of sound internal control is established, which is effectively implemented and maintained at all levels within the company to ensure safeguarding of its charitable assets. Such a system of sound internal control is characterized, *inter-alia*, by,
 - (a) the issuance and implementation of policies, procedures, delegation of decision making powers, record management systems, financial management systems and tools, etc.;
 - (b) having appropriate controls in place to ensure that donors, beneficiaries, promoters, members, directors, stakeholders, employees, volunteers or other people associated with the company or its associated company are not listed as a designated individual or entity which is subject to targeted financial sanctions;
- (xxvi) the company shall separately maintain the following registers in addition to the books of account as required under the Act, -
 - (a) register of donors and donations including information about donor's names, addresses, type of donation received *i.e* in cash or in kind, amount/value of donation received, date of receipt of donation, mode of payment, particulars of payment instrument and the purpose of donation;
 - (b) register of donees and beneficiaries of the funds disbursed including

¹⁰ Substituted through SRO 1574 dated 29-11-2021

information about their names, addresses, type of disbursement *i.e* in cash or in kind, amount/value of disbursement, date of disbursement and the purpose and other details of disbursement;

(xxvii) the company shall ensure compliance with the conditions prescribed in relations to anti-money laundering and counter financing of terrorism under the applicable laws; and

(xxviii) ¹¹[the company shall comply with any other condition(s) as may be imposed by the Commission at the time of grant of license or imposed from time to time subsequent to grant of license].

¹²["**7A.** All the conditions provided in the license granted under section 42 of the Act, including renewal of license, which are in contradiction to these regulations shall have no effect henceforth."]

8. ¹³[Omitted]

9. ¹⁴[Omitted]

10. Fit and proper criteria for promoters, members, directors and chief executive officer .- ¹⁵(1) Each of the promoters, directors, chief executive officer and members of an association shall meet the fit and proper criteria as provided in these regulations:

Provided that the Commission shall assess the fitness and propriety of the promoters, directors and the chief executive officer at the time of grant of license whereas the company shall assess the fitness and propriety of its members, directors and the chief executive officer for any subsequent changes after incorporation of the company;

Provided further that the fit and proper criteria shall remain applicable at all times and in case of any non-compliance at any point in time, the company shall be responsible for replacement of above referred persons."].

(2) The fitness and propriety shall be assessed by taking into account all the relevant facts including but not limited to the following,-

(i) **Integrity and track record.-**A person shall fulfil the following requirements in order to act as promoter, member, director or chief executive officer of the company,-

- (a) he has not been found associated with any money laundering or terrorist financing activities, illegal banking business, illegal deposit taking or financial dealings, and also understand the company's unique risks including the money laundering and terrorism financing risks in the locations where the company operates;
- (b) he or the companies in which he is a director or major shareholder have not been declared by tax authorities as a tax defaulter;
- (c) he or the companies in which he was a promoter or is a director or major shareholder have not been found involved in any fraudulent activities or illegal

¹¹ Substituted through SRO 1574 dated 29-11-2021

¹² Added through SRO 1574 dated 29-11-2021

¹³ Omitted through SRO 1574 dated 29-11-2021

¹⁴ Omitted through SRO 1574 dated 29-11-2021

¹⁵ Substituted through SRO 1574 dated 29-11-2021

activities;

- (d) he has not been found convicted of fraud or breach of trust or of an offence involving moral turpitude by a court of law;
- (e) he has not been actively involved in the management of a company whose registration or license has been revoked or cancelled or which has gone into liquidation or other similar proceedings due to financial irregularities or malpractices;
- (f) he is not ineligible, under the Act and company law or any other legislation;
- (g) he has not been found involved in any undesirable or anti-state activities;
- (h) he has not been found involved in multi-level marketing (MLM), Pyramid and Ponzi Schemes, or other related activities/businesses or any lottery business;
- (i) ¹⁶[he has not entered into a plea bargain arrangement with the National Accountability Bureau or any other regulatory body or a law enforcement agency has not initiated a serious investigation against him.”; and.

(ii) **Solvency and financial soundness.-** A person must fulfil the requirement, in order to act as promoter, director or chief executive officer of the company that there is no instance of overdue or past due payment to a financial institution, irrespective of amount, appearing in the latest Consumer Credit Information Report (CCIR) of the person and of the companies, firms, sole proprietorship etc. where the person is a chief executive, director ¹⁷[other than nominee director and Independent director], owner or partner, etc.

(iii) **Qualification and experience.-** A person shall possess adequate qualification and experience in order to act as promoter, director or chief executive officer of the company:

(3) ¹⁸[Qualification and experience.— A person shall possess adequate qualification and experience in order to act as promoter, director or chief executive officer of the company:

Provided that, in addition to adequate qualification, in case of single object company, the chief executive shall also possess adequate relevant experience in the field of that object; whereas, in case of multiple object company, it shall have at least one director in each field of object who possesses adequate relevant experience in that field so that all the directors collectively have adequate experience related to each object:

Provided further that, in addition to adequate qualification and experience as mentioned above, the chief executive in case of multiple object company, shall possess adequate relevant experience in the field of principal line of business of the Company.”] and.

4. [Omitted]

CHAPTER III

REVOCATION OF LICENSE AND WINDING UP

11. Revocation of license.- (1) In addition to the grounds provided under sub-section

¹⁶ Added through SRO 1574 dated 29-11-2021

¹⁷ Substituted through SRO 0145 dated 28-02-2020

¹⁸ Substituted through SRO 1574 dated 29-11-2021

(5) of section 42 for revocation of the license, where the promoters, directors or chief executive officer of the company licensed under section 42 of the Act and registered under these regulations or company law do not comply with any of the conditions imposed by these regulations or are disqualified under regulation 10 at any time ¹⁹~~[or fail to get the license renewed within the time period provided under these regulations]~~ or have violated any provision of these regulations or of the Act, the Commission may, after giving a notice in writing and an opportunity of being heard, revoke the license.

(2) Where the Commission revokes the license granted under section 42 of the Act, it shall send the revocation order to the company at its registered office address and place this information on the website of the Commission.

(3) Upon revocation of the license by the Commission, the company shall cease to enjoy the exemptions and privileges conferred upon it by virtue of license granted under section 42 of the Act.

(4) The company shall immediately prepare and arrange audit of its financial statements for the period starting from the day following the date of last audited financial statements till date of revocation of license in case the latest available audited financial statements are older than three months and the auditor shall submit its report within fifteen days of its engagement for the purpose.

(5) Subject to the requirements of section 43 of the Act, the board of directors of the company shall within a period of ten days of revocation of license shortlist and approve the name of transferee company which has provided concurrence to receive the assets of the company .

(6) Subsequent to the approval of the board, the chief executive officer shall proceed to transfer the assets of the company after satisfaction of all debts and liabilities by entering into agreement with approved transferee company and such agreement shall set out the roles and responsibilities of transferor and transferee companies and mechanism for transfer of assets along with details of assets to be transferred.

(7) Subject to the provisions of sub-section (2) of section 43 of the Act, the board shall file the report to the registrar in the manner as provided in **NFP Form** ²⁰**[2]** along with following documents,-

- (i) affidavit by the chief executive officer stating that all requirements of the Act and these regulations have been fully complied regarding transfer of assets to another section 42 company;
- (ii) latest audited financial statements along with auditors report exhibiting complete details of total assets, total debts and liabilities along with net assets to be transferred to another company licensed under section 42 of the Act;
- (iii) copy of minutes of board meeting in which transferee company was short listed;
- (iv) copy of letter of concurrence from the transferee company;
- (v) copy of agreement for transfer of assets; and

¹⁹ Omitted through SRO 1574 dated 29-11-2021

²⁰ Substituted through SRO 1574 dated 29-11-2021

- (vi) certificate confirming completion of transfer of assets issued by the auditor of transferee company.

12. Surrender of License.- (1) The Company may apply to the Commission for voluntary surrender of license along with reasons for the same and the Commission may revoke the license if it deems it expedient.

(2) Upon revocation of license, the company shall follow the procedure specified in sub-regulation (4), (5), (6) and (7) of regulation 11 and provisions of section 43 of the Act.

CHAPTER IV

MISCELLANEOUS

13. Financial Statements.- ²¹[- (1) The company shall ensure that its income and expenditure accounts clearly exhibit a statement of all funds, grants, contributions, donations received from local and foreign sources separately.

(2) The directors' report prepared under the Act shall also include information, pertaining to-

- (i) compliance with the relevant provisions of the Act;
- (ii) compliance with all the provisions and conditions of these regulations;
- (iii) compliance with the all conditions provided in the license (if any); and
- (iv) confirmation to the effect that prior security clearance in terms of these regulations, in respect of foreign donation, foreign member, foreign director and foreign chief executive officer, if any, has been obtained].

14. Monthly Reporting.-The company shall submit to the Commission in the manner as provided in **NFP Form** ²²[3], a monthly statement of amount received from local and foreign source equivalent to or in excess of five million rupees.

15. Security Clearance.- ²³[The Commission shall obtain prior security clearance in accordance with policy approved by the Government in respect of foreign funding or donation or foreign promoters, foreign directors, or foreign chief executive officer of applicant seeking license under these Regulations.

2. The Company, subsequent to grant of license, shall obtain prior security clearance through an application made to the Commission in case it intends to:

- (i) Receive foreign funding or donation; or
- (ii) Induct foreign member; or
- (iii) Appoint foreign director or foreign chief executive officer.”]

16. Penalties.- Any contravention or violation of these regulations shall be punishable in accordance with the provisions of the Act.

17. Repeal.- (1) The following rules, circulars and notifications hereinafter referred to as repealed instruments, are hereby repealed, namely,-

- (i) Rule 6 of Companies (General Provisions and Forms) Rules, 1985;

²¹ Substituted through SRO 1574 dated 29-11-2021

²² Substituted through SRO 1574 dated 29-11-2021

²³ Substituted through SRO 1574 dated 29-11-2021

- (ii) Circular No. 29 of 2008 dated December 24, 2008;
- (iii) Circular No. 4 of 2009 dated February 27, 2009;
- (iv) Circular No. 12 of 2011 dated August 19, 2011;
- (v) Circular No. 2 of 2012 dated January 16, 2012;
- (vi) Circular No. 02 of 2015 dated January 01, 2015;
- (vii) Circular No. 04 of 2015 dated January 30, 2015;
- (viii) Circular No. 05 of 2015 dated January 30, 2015;
- (ix) Circular No. 28 of 2015 dated August 10, 2015;
- (x) Circular No. 45 of 2015 dated December 16, 2015;
- (xi) Circular No. 13 of 2016 dated April 05, 2016;
- (xii) Circular No. 16 of 2016 dated April 11, 2016;
- (xiii) Circular No. 34 of 2016 dated November 07, 2016;
- (xiv) S.R.O 527(1)/2016 dated June 07, 2016; and
- (xv) S.R.O 285(1)/2017 dated April 18, 2017.

(2) 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 under these Regulations and shall be proceeded with to completion and be enforced and have effect accordingly.