

Bangladesh Securities and Exchange Commission (Securities Market Shari'ah Advisory Council) Rules, 2022 [Updated up to last amendment of 10 April 2023]



বাংলাদেশ
অতিরিক্ত সংখ্যা
কর্তৃপক্ষ কর্তৃক প্রকাশিত

গেজেট

বৃহস্পতিবার, সেপ্টেম্বর ২৯, ২০২২

[বেসরকারী ব্যক্তি এবং কর্পোরেশন কর্তৃক অর্থের বিনিময়ে জারীকৃত বিজ্ঞাপন ও নোটিশসমূহ]

Notification

Dated, 23 August 2022

No.- BSEC/CMRRCD/2009-193/40/Admin/134 - Whereas the Bangladesh Securities and Exchange Commission (hereinafter referred to as “the Commission”) deems it fit that it is necessary to form a shari'ah advisory council for ensuring proper issuance of Islamic shari'ah based securities (hereinafter referred to as “ISBS”) and protection of investors' interest in such securities in light of Islamic shari'ah as well as development of Islamic capital market in Bangladesh (hereinafter referred as ICM);

Now, therefore, in exercise of the powers conferred by section 33 of the Securities and Exchange Ordinance, 1969 (Ordinance No. XVII of 1969), the Bangladesh Securities and Exchange Commission makes, after prior publication, the following rules, namely-

1. Short title and application. -

- (1) These rules may be called the Bangladesh Securities and Exchange Commission (Securities Market Shari'ah Advisory Council) Rules, 2022;
- (2) These rules shall be applicable for Islamic shari'ah based securities (ISBS) issued or to be issued and also any matter towards the development of ICM and protection of investors' interest.

2. Definition. – ¹[(1) In these Rules, unless there is anything repugnant in the subject or context,-]

(a) “council” means shari’ah advisory council (SAC) means an independent body formed by the Commission under these rules consisting of specialized jurists in Fiqh al-Muamalat (Islamic commercial jurisprudence) and expert members from different fields;

²[(aa) “connected person” means any connected person as defined in clause (8) of sub-rule (1) of rule 2 of the “Bangladesh Securities and Exchange Commission (Alternative Investment) Rules, 2015”];]

(b) “expert” means a person having sound knowledge in any specific sector or industry or relevant subject area;

(c) “islamic shari’ah based securities (ISBS)” means Islamic shari’ah based securities as defined under section 2(l) of the Bangladesh Securities and Exchange Commission (Debt Securities) Rules, 2021;

(d) “issuer” means issuer of any securities as defined under section 2(g) of the Securities and Exchange Ordinance, 1969;

(e) “islamic capital market (ICM)” means the platform where all types of ISBS are issued, traded or transferred;

(f) “member” means any member of the shari’ah advisory council (SAC);

(g) “shari’ah” means the practical divine law deduced from its legitimate sources: the Qur’an, Sunnah, consensus (ijma’), analogy (qiyas) and other approved sources of the Shari’ah;

(h) “shari’ah pronouncement” means a juristic opinion given by the SAC on any matter under the jurisdiction of these rules pertinent to shari’ah issues based on appropriate methodology;

(i) “shari’ah scholar” means a person specialized or qualified on Islamic fiqh or shari’ah; and

(j) “shari’ah supervisory board (SSB)” means the body formed for issuance of ISBS under any rules issued by the Commission.

¹ Inserted vide Notification No. BSEC/CMRRCD/2009-193/56/Admin/142 dated 20 march 2023, published in the Bangladesh Gazette 10 April 2023.

² Inserted vide Notification No. BSEC/CMRRCD/2009-193/56/Admin/142 dated 20 march 2023, published in the Bangladesh Gazette 10 April 2023.

¹[(2) Words and expressions used herein and not defined, but defined in the Securities and Exchange Ordinance, 1969 (Ordinance No. XVII of 1969), ব্যাংক কোম্পানী আইন, ১৯৯১ (১৯৯১ সনের ১৪ নম্বর আইন), বাংলাদেশ সিকিউরিটিজ অ্যান্ড এক্সচেঞ্জ কমিশন আইন, ১৯৯৩ (১৯৯৩ সনের ১৫ নম্বর আইন), আর্থিক প্রতিষ্ঠান আইন, ১৯৯৩ (১৯৯৩ সনের ২৭ নম্বর আইন), কোম্পানি আইন, ১৯৯৪ (১৯৯৪ সনের ১৮ নম্বর আইন), ডিপজিটরি আইন, ১৯৯৯ (১৯৯৯ সনের ৬ নম্বর আইন) and বীমা আইন, ২০১০ (২০১০ সনের ১৩ নম্বর আইন) shall have the same meaning respectively assigned to them in the said Acts and the Ordinance, and the Rules and Regulations issued thereunder.”]

3. Formation, composition and selection. -

- (1) The Commission shall constitute or reconstitute a shari’ah advisory council (hereinafter also referred to as “SAC” or “council”) by order in writing from time to time under these rules.
- (2) The council shall consist of nine (09) members comprising of shari’ah scholars and experts.
- (3) Out of the total council members, at least five (05) members shall be shari’ah scholars and the remaining members shall be from experts.
- (4) The expert members shall be selected from each specific industry or sector or subject matter, namely- securities market, law, finance or banking and accounting.
- ²[(5) The Commission shall nominate a member among the local shari’ah scholar members of the council as a Chairman of the SAC.]
- (6) Terms of reference (TOR) for appointment of the members shall be defined by the Commission from time to time or in the letter of engagement.

¹ Inserted vide Notification No. BSEC/CMRRCD/2009-193/56/Admin/142 dated 20 march 2023, published in the Bangladesh Gazette 10 April 2023.

² Replaced vide Notification No. BSEC/CMRRCD/2009-193/56/Admin/142 dated 20 march 2023, published in the Bangladesh Gazette 10 April 2023.

- (7) The members of the SAC shall serve maximum two (02) terms consecutively and each term is maximum of three (03) years:

Provided that the Commission may appoint any previous member of the SAC after at least an interval of one term of his/her consecutive two (02) terms:

Provided further that the Commission shall fix the honorarium of the members of the SAC, for the attendance of meeting, etc., by order in writing from time to time.

- (8) The Commission may remove any member of the SAC for violation of any provision of these rules or who is convicted for any criminal offence or any offence related to securities laws or any other law:

Provided that no such removal order shall be made without giving him an opportunity of being heard:

Provided further that the Commission may take opinion from any other member of the SAC with regard to such removal.

- (9) The Chairman of the SAC may recommend to the Commission for termination of any member if and only if:

- (a) potential misconduct or breach of terms of reference is proven;
- (b) not attended the meeting three (03) times consecutively without a legitimate reason.

4. Fit and proper criteria for shari'ah scholar member. - Each shari'ah scholar member shall meet the following fit and proper criteria:

- ¹[(a) the shari'ah scholar shall be qualified in Fiqh having Dawr-e-Hadith (Takmil) or Kamil or Post Graduate Degree on Shari'ah, Islamic Studies, Islamic

¹ Replaced vide Notification No. BSEC/CMRRCD/2009-193/56/Admin/142 dated 20 march 2023, published in the Bangladesh Gazette 10 April 2023.

Jurisprudence or similar Fiqh related degree with profound knowledge in Fiqh or Usul al Fiqh (shari'ah jurisprudence), especially in Fiqh al- Muamalat (Islamic commercial jurisprudence):

Provided that shari'ah scholar shall also have additional qualification having takhassus or specialization or any other certified degree on Fiqh or shari'ah or Fiqh al-Muamalat;]

- (b) the shari'ah scholar shall have at least ten (10) years professional experience, of which at least five (05) years as a member of Fatwa Board or Shari'ah Board; or faculty or mufti of any reputed Darul Ifta or Department of Islamic Studies or Department of Islamic Law or Shari'ah;

- ¹[(c) The shari'ah scholar shall give an undertaking, whether (s)he is a member of SSB or Board of Directors or Trustee Board or connected person of any issuer, or not:

Provided that if any member of SAC is a member of any SSB or Board of Directors or Trustee Board or having any relation with the issuer or connected person of the issuer, (s)he shall not attend any meeting regarding any issue of such issuer:

Provided further that if any shari'ah scholar intends to be appointed as a new member of any SSB or Board of Directors or Trustee Board of any issuer or advisor of any issuer after being selected as a member of SAC, (s)he shall take prior approval of the Commission for such appointment;]

- (d) the shari'ah scholar shall be a muslim individual with strong moral value, independent and free from conflict of interest and is not convicted for any criminal offence and not having anomalous opinions in contradiction of the well-established contemporary scholarly consensus as constrained in the shari'ah principles and rules; ²[~~deleted~~]

¹ Replaced vide Notification No. BSEC/CMRRCD/2009-193/56/Admin/142 dated 20 march 2023, published in the Bangladesh Gazette 10 April 2023.

² Deleted vide Notification No. BSEC/CMRRCD/2009-193/56/Admin/142 dated 20 march 2023, published in the Bangladesh Gazette 10 April 2023.

(e) the shari'ah scholar shall have good understanding of legal and regulatory framework of the jurisdiction related to financial sector¹;²[and]

³[(f) the shari'ah scholar is not a bank loan defaulter as per CIB report of Bangladesh Bank.]

5. Fit and proper criteria for expert member. - Each expert member of the SAC shall meet following fit and proper criteria:

(a) the expert member shall have post-graduation in any business discipline or Islamic finance or economics or law:

Provided that each expert member must have specialized or certified degree in the subject area or any other qualification as determined by the Commission from time to time by order in writing;

(b) the expert member shall have basic understanding of shari'ah principles, preferably in Islamic banking, Islamic finance or securities market;

(c) the expert member shall have at least ten (10) years of professional experience in the relevant area;

(d) the expert member shall be a person with strong moral value, sound mental health, independent and free from conflict of interest and is not convicted in any criminal offence;

⁴[(e) the expert member shall give an undertaking, whether (s)he is a member of SSB or Board of Directors or Trustee Board or connected person of any issuer, or not:

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² Inserted vide Notification No. BSEC/CMRRCD/2009-193/56/Admin/142 dated 20 march 2023, published in the Bangladesh Gazette 10 April 2023.

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⁴ Replaced vide Notification No. BSEC/CMRRCD/2009-193/56/Admin/142 dated 20 march 2023, published in the Bangladesh Gazette 10 April 2023.

Provided that if any expert member of SAC is a member of any SSB or Board of Directors or Trustee Board or having any relation with the issuer or connected person of the issuer, (s)he shall not attend any meeting regarding any issue of such issuer:

Provided further that if any expert member intends to be appointed as a new member of any SSB or Board of Directors or Trustee Board of any issuer or advisor of any issuer after being selected as a member of SAC, (s)he shall take prior approval of the Commission for such appointment; and]

- (f) the expert member is not a bank loan defaulter as per CIB report of Bangladesh Bank.

6. Meeting and decision, etc.-

- (1) The decision of the SAC shall be by majority of votes in a meeting duly constituted with the requisite quorum.

- (2) For any decision to be taken by the SAC, there shall be a proper quorum of five (05) members, where at least three (03) members from the shari'ah scholars must be present either in person or on virtual platform.

- ¹[(3) All members shall have equal voting right:

Provided that in case of shari'ah ruling or pronouncement, which is a Shari'ah matter in view of the Chairman of the SAC, only the Shari'ah scholar members shall vote.]

- ²[(4) If difference in opinion arises related to shari'ah interpretation, the view of the majority of shari'ah scholar members shall prevail:

Provided that dissenting opinion on shari'ah interpretation by any shari'ah scholar shall be minuted and forwarded to the Commission.]

- (5) The SAC shall take into account both the application and spirit of shari'ah in issuing its shari'ah pronouncement:

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Provided that no decision shall be taken on contrary to the spirit of shari'ah.

- (6) The shari'ah pronouncement shall be signed by each shari'ah scholar present in the meeting.
- ¹[(7) The dissenting opinion of any member shall be minuted and attached with the meeting resolution, which shall be forwarded to the Commission.]
- (8) The decision of the SAC shall be compiled which is relating to advisory and pronouncement along with the basis of conclusion, and shall be published on a regular basis on approval of the Commission.
- (9) Every issuer or originator of ISBS shall follow the pronouncement issued by the SAC.
- (10) The Commission shall ensure or provide the secretarial, administrative and financial support to the SAC or any other means by order in writing from time to time.
- (11) A report on the activities of the SAC shall be prepared and submitted to the Commission by the Chairman of the Council, once in a year, within thirty (30) working days of end of each year.

7. Functions of the SAC. -

- (1) The SAC shall primarily focus on advisory functions along with supervisory authority as set out by the Commission from time to time.
- (2) The functions of the SAC may be divided into the following broad categories, namely: -
 - (a) providing advisory services and issuing shari'ah pronouncement related to matters regarding ISBS or any matter related to securities market, as and when sought by the Commission;

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- (b) issuing shari'ah guidelines or setting standards for ISBS in light of the shari'ah, as and when requested by the Commission;
 - (c) validating the product structures of ISBS and its relevant documentation submitted by any issuer as and when referred by the Commission;
 - (d) validating any other service, transaction mechanism, etc., in light of the shari'ah as requested by any issuer or originator;
 - (e) oversight and supervision of the SSB formed by the different issuers or originators of ISBS, as and when instructed by the Commission;
 - (f) providing advisory services on any matter related to ISBS or Index or shari'ah based indices or securities market as sought by the Exchange, Depository or Central Counterparty; ¹[~~deleted~~]
 - ²[(ff) shall examine and monitor whether the issuer is following the shari'ah pronouncement issued by the SSB; and]
 - (g) any other responsibilities, as and when assigned by the Commission.
- (3) In providing opinion on issuance of any ISBS, the SAC shall focus on the principles and practices followed by the different Islamic securities market globally and in line with the principles and standards adopted by the globally reputed standard setting body like International Islamic Fiqh Academy of the Organization of Islamic Cooperation (OIC), Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), the Islamic Financial Services Board (IFSB).
- (4) Advisory functions of the SAC is to support the Commission in the following issues, but not limited to: -

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- (a) providing advisory service on specific issue and matter relating to ISBS and ICM or securities market;
 - (b) providing opinion on the shari'ah issue to any court of law, if solicited, for any issue related to ISBS and ICM or securities market; and
 - (c) providing advisory service to resolve and settle complaint and dispute related to ISBS in light of the shari'ah.
- (5) The functions of the SAC shall primarily be passive in nature, and shall perform with the request of the Commission:

Provided that the SAC shall be proactive in nature when, and only when, if any urgent matter is needed to address to protect the interest of the investors in light of the shari'ah, to aware of any major non-compliance with the shari'ah principles occurred by any issuer or originator of ISBS, where the Commission is not aware of; or any major misconception arises out of any matter relating to the function of the SAC, where the SAC shall inform the matter in written to Commission for taking necessary action thereof.

- (6) The SAC shall support the Commission by giving opinion, among others, but not limited to: -
- (a) adopting shari'ah standards for the ISBS for the country in light of the standards adopted globally;
 - (b) providing shari'ah consultation to the regulators, government and relevant authorities with regard to various laws, rules and regulations;
 - (c) providing opinion on any directive or order or notification related to the ISBS or ICM or securities market before its issuance to ensure shari'ah compliance;
 - (d) preparing an ethical standard for the issuers or originators of ISBS; and

- (e) coordinating with other shari'ah boards or councils established by the Government or other regulators and relevant bodies to establish uniform best practices in the area relating to Islamic finance or ICM or securities market.
- (7) The SAC shall exercise at least the following oversight and supervision activities as set by the Commission, but not limited to: -
- (a) settlement of any difference of opinion or disagreement between or among the SSBs formed by the different issuers or originators of ISBS, whether the above difference of opinion is published or referred to the Commission for final resolution;
 - (b) supervising and guiding the shari'ah compliance inspection and providing shari'ah views on the key issues brought before it; and
 - (c) holding periodic meetings with the SSBs of the issuers or originators of ISBS on a need basis to discuss fiqh issues and their solutions with regard to key Islamic finance matters, specifically with reference to the direction of product innovation or structuring of ISBS or the securities market.

8. Support to be provided by the Commission. -For proper functioning of the SAC, the Commission shall:

- (a) ensure operational independence to the council;
- (b) develop and implement a professional development program for the members of the SAC and SSB towards updating the rules and regulations or securities laws;
- (c) develop a succession planning mechanism for the SAC;
- (d) provide all required resources including adequate budget, access to information and human resources, as may be deemed necessary by the Council for proper discharge of its duties;

- (e) provide guidance for the exchange or the issuer or originator for taking advisory services of the SAC on their affairs or operations, if solicited; ¹[~~deleted~~]
- (f) develop or adopt independent guidelines and code of conduct for the SAC in consultation with the SAC²[;] ³[and]
- ⁴[(g) give order or instructions from time to time for support of the SAC.]

9. Maintenance of confidentiality and non-disclosure principles. - The SAC and its members shall follow the provision of section 19 of the Securities and Exchange Ordinance, 1969 regarding non-disclosure and confidentiality of information and documents at all times, except what is already in public domain or when information or documents are solicited by a court of competent jurisdiction or any proceedings of regulatory matter in due process of the law.

10. Contravention. - If any person violates any of the provision of these rules, the Commission shall take appropriate actions under the provisions of the Securities and Exchange Ordinance, 1969 (Ordinance No. XVII of 1969).

By order of the Bangladesh Securities and Exchange Commission

**Professor Shibli Rubayat-Ul-Islam
Chairman.**

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