Bangladesh Securities and Exchange Commission

"মুজিববর্ষের অঙ্গীকার
উন্নয়ন-অর্থায়নের উৎস হবে পুঁজিবাজার"

Notice

Dated, the 28 March 2022

The Bangladesh Securities and Exchange Commission (BSEC) hereby publishes the draft "Bangladesh Securities and Exchange Commission (Capital Market Shari'ah Advisory Council) Rules, 2022" under section 33 of the Securities and Exchange Ordinance, 1969 (Ordinance No. XVII of 1969) for eliciting public opinion, etc.

Opinion, advice or objection, if any, thereon will have to be sent to the following address within two weeks from the date of publication of this Notice.

Address for sending opinion/advice or objection:

Chairman

Bangladesh Securities and Exchange Commission
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Sher-e-Bangla Nagar Administrative Area
Dhaka-1207
Email: chairman@sec.gov.bd and copy to: mehran@sec.gov.bd

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Draft on

Bangladesh Securities and Exchange Commission (Capital Market Shari'ah Advisory Council) Rules, 2022

No.- BSEC/CMRRCD/................../- 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 shari'ah based securities and protection of investors in the islamic shari'ah based securities (hereinafter referred to as "ISBS") in light of the shari'ah as well as development of the islamic capital market;

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 applicability.-**

(1) These rules may be called the Bangladesh Securities and Exchange Commission (Capital Market Shari'ah Advisory Council) Rules, 2022;

(2) These rules shall be applicable for all the islamic shari'ah based securities issued or to be issued in the capital market of the country.

2. **Definition.-**

(a) "council" means Shari'ah Advisory Council (SAC) formed under these rules;

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

(c) "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) "member" means member of the Shari'ah Advisory Council (SAC);

(f) "shari'ah" means a religious law derived from the religion percepts of Islam and is based on the sacred scriptures of Islam, particularly the Holy Qur'an and the Hadith;

(g) "shari'ah pronouncement" means a shari'ah opinion given by SAC on any matter under these rules;

(h) "shari'ah scholar" means a person specialized or qualified on islamic fiqh or shari'ah;

(i) "shari'ah supervisory board (SSB)" means the body formed under any rules issued by the Commission for issuance of ISBS.

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 for the Capital Market 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 industry or sectoral experts from home or abroad.

(3) Out of the total council members, at least five (05) members shall be shari'ah scholars and the rest members shall be from industry or sectoral experts.

(4) The Chairman of the SAC shall be elected by the council members amongst the local shari'ah scholar members.

(5) Terms of reference (TOR) for appointment of the members shall be defined by the Commission from time to time.

(6) 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 continuous two (02) terms as a member of the SAC.

(7) The Commission shall fix the remuneration and honorarium of the members of the SAC by order in writing from time to time.

(8) The Commission may decide to remove any member of the SAC, after giving him an opportunity of being heard:

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

4. **Fit and proper criteria for shari'ah scholar member.**-The fit and proper criteria for shari'ah scholar member shall be as follows:

   (a) The shari'ah scholar must have Dawr-e-Hadith (Takmil) or Kamil or Post Graduate Degree on Islamic Studies, Fiqh, Islamic Law or Islamic Jurisprudence with profound knowledge in fiqh and Usul al Fiqh, specially in Fiqh al- Muamalat:

   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 or Islamic Jurisprudence;

   (b) the shari'ah scholar must have minimum ten (10) years professional experience, of which at least five (05) years as a member or faculty of any reputed Darul Ifta or Department of Islamic Studies or Department of Islamic Law or Shari'ah or Fatwa Board or Shari'ah Board in providing or teaching shari'ah specially on Islamic Commercial issues or Islamic Law or Islamic Finance or related areas or financial matters;

   (c) good command in Arabic and common business language(s);

   (d) demonstrable interest in and commitment to the field of Islamic Finance;

   (e) shall be a person with strong moral value, practicing muslim, independent and free from conflict of interest and not involved in any criminal offence;

   (f) shall not be member in any SSB of any issuer after being selected as a member of the SAC.

5. **Fit and proper criteria for industry expert member.**-The fit and proper criteria for an industry expert member of the SAC shall be as follows:

   (a) shall have post-graduation in any business discipline or Islamic Finance or Economics or Law:

   Provided that among the expert members at least one member shall be chosen from each specific field, namely- law, finance or banking, where such 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) shall have basic understanding of shari'ah principles, and preferably in islamic banking, islamic finance or islamic capital market;

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

(d) shall be a person with strong moral value, sound mental health, practicing muslim, independent and free from conflict of interest and not involved in any criminal offence;

(e) shall not be member in any SSB or Board of Directors of any issuer after being selected as a member of the SAC.

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 in presence of at least five (05) members, where at least three (03) members from the shari'ah scholars must be present.

(3) All members shall have equal voting right:

Provided that if any difference in opinion arises, the view of the majority of shari'ah scholar members shall prevail.

(4) The SAC shall take into account both the application and spirit of shari'ah in issuing its shari'ah pronouncement. No decision shall be taken on contrary to the spirit of shari'ah.

(5) The shari'ah pronouncement shall be signed by each shari'ah scholar. However, dissenting opinion of shari'ah scholar shall be documented and attached with the meeting resolution.

(6) The decision of the SAC relating to advisory and pronouncement, along with the basis of conclusion, shall be compiled and published on a regular basis after approval of the Commission:

Provided that every issuer shall follow the pronouncement issued by the SAC.

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(7) The Commission shall provide the secretarial support to the SAC or any other means by order in writing from time to time.
(8) A report on the activities of SAC shall be prepared and submitted to the Commission, 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 a limited level of 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 islamic capital market, as and when sought by the Commission;
- (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 or any other service, tool, etc., offered by the issuer in light of the shari'ah, as and when referred by the Commission;
- (d) oversight and supervision of the SSB formed by the different issuers or originators of ISBS, as and when instructed by the Commission;
- (e) providing advisory services on any matter related to ISBS or islamic capital market as sought by the Exchange, Depository or Central Counterparty; and
- (f) any other responsibilities, as and when assigned by the Commission.

(3) The SAC shall focus on the principles and practices followed by the different islamic capital 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 Organisation of Islamic Cooperation (OIC), Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), the Islamic Financial Services Board (IFSB), etc.
(4) Advisory functions of a SAC is to support the Commission in the following issues, but not limited to the followings:

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(a) providing advisory service on specific issue and matter relating to ISBS and islamic capital market;
(b) providing opinion on the shari'ah issue to any court of law, if solicited, for any issue related to ISBS and islamic capital 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 SAC shall primarily be passive in nature, performed 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 of ISBS, where the Commission is not aware of; or any major mis-conception arises out of any matter relating to the function of the SAC.

(6) The SAC shall support the Commission by giving opinion, among others, but not limited to the followings:
(a) adopting shari'ah standards for the ISBS;
(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 islamic capital market before its issuance to ensure shari'ah compliance;
(d) preparing a code of ethics for the issuers 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 islamic capital 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 the SSBs formed by the issuer of ISBS and the SAC;

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(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 meeting with the SSBs of the issuers 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 islamic securities market.

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

(a) operational independence to the council;

(b) develop and implement a continuing professional development (CPD) program for the members of the SAC;

(c) develop a succession planning mechanism for the SAC;

(d) to 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; and

(e) develop or adopt independent guidelines and code of conduct for the SAC in consultation with 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.

By order of the Bangladesh Securities and Exchange Commission

Professor Shibli Rubayat-Ul Islam
Chairman.

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