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10. Consideration of the application of trustee and decision thereon.

- (1) On receipt of the application under rule 9, the Commission shall examine it, and if it is satisfied that all the requirements of rule 9 are fulfilled, it shall accord registration to the trustee to act as trustee to the issue, as sought for, within thirty days of receipt of the application.
 - (2) If the Commission finds that the application does not fulfill all the requirements of rule 10, it may, within twenty days of receipt of the application, direct the applicant to fulfill the requirements within such time as the Commission may determine, and on fulfillment of such requirements, the Commission shall accord the consent as prayed for within thirty days of such fulfillment.
 - (3) The Commission may call for further information, in addition to the requirements of rule 9, if it so deems necessary.
 - (4) If the Commission finds that the application does not fulfill all the requirements of rule 9, or where a direction to fulfill such requirements has been given under sub-rule (2) and (3) and the applicant has failed to fulfill such requirements, it may reject the application, stating the reasons thereof.
 - (5) If the Commission decides to award registration to the trustee, the trustee shall pay, within fifteen days of issuance of the registration certificate, a registration fee of Tk. 50,000.00 (taka fifty thousand) only through a bank draft or payment order issued in favor of the Securities and Exchange Commission.
- 11. Substitute trustee.-** (1) If the trustee resigns or fails to perform its duties under the deed of trust or these rules, the debt security holders' association shall appoint a substitute trustee.
- (2) The substitute trustee shall meet the qualification requirements of rule 3 of these rules.
 - (3) The trustee which is replaced shall do all that is necessary to substitute the new trustee in its place.
- 12. Duties of the trustee upon a default.**(1) If an event of default as defined in the deed of trust is known to the trustee, the trustee shall mail a notice of the default within seven days after it occurs to debt holders, each stock exchange upon which the debts are traded, and the Commission.
- (2) If, within ten days after mailing of the notice required by sub-rule (1), the officers of the debt holders' association shall inform the trustee that the debt security holders' association will meet to consider the default, the trustee shall not act until instructed in writing by the debt holders' association.
 - (3) If no meeting of the debt security holders' association is called within ten days after mailing of the notice required by sub-rule (1) or the debt security holders' association issues no written instructions to the trustee within thirty days after mailing of the notice, the trustee shall proceed as required by the deed of trust. If the debt security holders' met and issue written instructions to the trustee, the trustee shall follow those instructions.
 - (4) The trustee shall incur no liability if it follows the written instructions of the debt security holders' association or, if the debt security holders' association issues no written instructions, the procedures required by the deed of trust.
 - (5) If all efforts of negotiation by the trustee fail, it can take legal action against the issuer for recovery of the outstanding including principal and interest of the debt securities as per existing laws.
- 13. Fees and expenses of the trustee.** The issuer will pay the fees and expenses of the trustee.
- 14. Arbitration.** Any dispute between or among the issuer, trustee, debt security holders' association, debt security holders' advocate or any other person bound by the deed of trust shall be arbitrated according to the Arbitration Act, 2001.
- 15. Powers of the Commission.**(1) The Commission shall have the power, after notice and an opportunity to be heard, to issue an order requiring any trustee under the deed of trust to comply with the provisions of these rules or an deed of trust to which it is a party. The Commission may act upon its own motion or upon the request of one or more debt security holders or any party to the deed of trust.
- (2) If any issuer or trustee violates any of the provisions of these rules or furnishes false, incorrect, misleading information or suppresses any information or neglects to discharge its duties, the Securities and Exchange Commission may take appropriate action under the Securities and Exchange Ordinance, 1969 or any other securities laws.
 - (3) The refusal or failure of any obligor to comply with an order under sub-rule (1) shall also be a violation of these rules.
- 16. Penalties for violations of these rules.**(1) Any person who violates the provisions of these rules shall be subject to civil and criminal penalties in accordance with law.
- (2) No civil penalty may be imposed by the Commission nor criminal proceedings begun without notice and an opportunity to be heard. The Commission shall make a record of its proceedings.
 - (3) Appeals from civil penalties assessed by the decision of the Commission shall be to the Commission and then to the superior court.

Schedule "A"
(See Rule: 4)

Format and contents of the Application

- To,
The Chairman
Securities and Exchange Commission
1. Name of the issuer;
 2. Legal status of the issuer;
 3. Address and telephone numbers of the issuer;
 4. Name, address and telephone number of the contact person;
 5. Date of incorporation (in case of companies);
 6. Date of commencement of business;
 7. Authorized capital (in case of companies);
 8. Paid-up capital (in case of companies);
 9. Total equity of the issuer;
 10. Net worth of the issuer;
 11. Total amount of debt due from the issuer;
 12. Type of collateral securities being offered;
 13. Type of debt instruments to be issued;
 14. Face value, issue price and number of securities being offered and the total issue amount;
 15. Coupon rate/discount rate and YTM;
 16. Tenor/Maturity;
 17. Mode of redemption;
 18. Rate of Return;
 19. Applicable tax rate;
 20. Period within which securities to be issued;
 21. Name of the Trustee;
 22. Paid-up capital of the Trustee;
 23. Net worth of the Trustee;
 24. Credit Rating Status of the issue;
 25. Rating Assigned by;
 26. Date of audited accounts, which is included in the IM;
- Sd/-
Chief Executive Officer
Name of the Issuer

Schedule "B"
(See Rule: 4)

Format and contents of the Information Memorandum

1. **Material Information:**
 - (1) In addition to the information specifically required by these rules, the IM shall contain all material information necessary to enable the investors to make an informed assessment of the issue, the issuer, the trustee, the securities being offered, the rights and obligations of the investors, the issuer and the trustee attaching to the debt securities being offered and full disclosure about the financial, corporate, management and other affairs of the issuer.
 - (2) The Commission may require disclosure of additional information in the IM as it considers appropriate in a particular issue, and the issuer shall comply it.
 - (3) If the Commission requires such information, it shall inform the issuer of the additional information in writing.
 2. **Information to be included in the IM-**
 - (1) Cover Page of the IM: On the cover page of the IM, the following information shall be furnished, namely:-
 - (a) Name of the issuer;
 - (b) Name of the trustee;
 - (c) Type of securities being offered;
 - (d) Face value, issue price and number of securities being offered and the total issue amount;
 - (e) Coupon rate/discount rate and YTM;
 - (f) Issue date of the IM;
 - (g) Credit rating status of the issue;
 - (h) The following statement:
"If you have any query about this document, you may consult the issuer and the trustee".
 - (2) Table of Contents.
 - (3) Report to the Investors.
 - (4) Risk Factors and Management's Perception about the Risks: All risk factors and management's perception about the same are to be clearly stated which shall include, among others, namely:
 - (a) interest rate risks;
 - (b) exchange rate risks;
 - (c) non-repayment risks;
 - (d) prepayment, call or refunding risks;
 - (e) security risks;
 - (f) liquidity risks;
 - (g) management risks;
 - (h) operational risks;
 - (i) business risks;
 - (j) industry risks;
 - (k) market and technology-related risks;
 - (l) risks related to potential or existing government regulations;
 - (m) risks related to potential changes in global or national policies.
 - (5) Details of the utilization of proceeds. If proceeds are to be utilized for project, details of the project with BEP quantity and capacity utilization at BEP (including all financial costs).
 - (6) Features of the debt securities to be issued, namely:-
 - (a) Basic Features of the instrument;
 - (b) Rate of return, Yield to Maturity, Coupon/Discount Rate;
 - (c) Transferability/Liquidity;
 - (d) Prepayment, Call, Refunding, conversion features;
 - (e) Late Redemption;
 - (f) Tax Features;
 - (g) Costs related to the issue;
 - (h) Repayment Schedule;
 - (i) Enforcement of charges over securities.
 - (7) Description of Collateral Security and type of charges to be created against the issue.
 - (8) Rights and obligations of the issuer.
 - (9) Rights and obligations of the trustee.
 - (10) Rights and obligations of the investors.
 - (11) Description of the issuer in respect of the following, namely:-
 - a) Capital Structure;
 - b) Business;
 - c) Management;
 - d) Description of encumbered and unencumbered assets with value thereof;
 - e) Profile of Directors/Owners of the issuer;
 - f) Description of assets and liabilities;
 - g) Description of previously issued debt or equity securities.
 - (12) Auditors' report along with Audited Financial Statements of the issuer made up to a date not earlier than 180 days from the date of issue of the IM.
 - (13) Comparative Financial Statements of the issuer for the last three years or for the period of its commercial operation, as the case may be. If the issuer is not in commercial operation, forecast financial statements for the next five years.
 - (14) The following Ratios of the issuer for last three accounting years or for the period of its commercial operation, as the case may be, namely:-
 - (a) Current Ratio;
 - (b) Quick Ratio;
 - (c) Times Interest Earned Ratio;
 - (d) Break-Even Point (including financial costs);
 - (e) Debt to Equity Ratio;
 - (f) Debt to Total Assets Ratio;
 - (g) Accounts Receivable Turnover Ratio;
 - (h) Inventory Turnover Ratio;
 - (i) Asset Turnover Ratio;
 - (j) Debt Service Coverage Ratio;
 - (k) Gross Margin Ratio;
 - (l) Operating Income Ratio;
 - (m) Net Income Ratio;
 - (n) Return on Assets;
 - (o) Return on Equity;
 - (p) Earnings- Per- Share (EPS);
 - (q) Net Asset Value (NAV) per share.
 - (15) Credit Rating Report of the issue.
 - (16) Description of the Trustee.
 - (17) Modus Operandi of the issue including:
 - (a) Application procedure;
 - (b) Allotment;
 - (c) Transfer;
 - (d) Repayment.
- Each page of the draft IM to be duly signed and stamped by the chief executive officers of the issuer and the trustee.

Schedule "C"
(See Rule: 4)

Format and contents of the deed of trust

1. Date of execution;
2. Name and legal status of the parties concerned;
3. Objectives of the issue;
4. Definitions;
5. Relation between the Parties;
6. Governing Laws;
7. Registered Address of the Trust:

8. Description of the Trust;
9. Description of the collateral securities to be charged with the Trustee;
10. Enforcement of charges over the collateral securities;
11. Beneficiaries of the collateral securities;
12. Commencement and Termination of the Trust;
13. Costs involved with the issue and by whom the costs are to be assumed;
14. Description of the Trustee with rights, duties and obligations;
15. Trustee fee;
16. Description of the debt securities to be issued;
17. Modus operandi of the issue;
18. Repayment/redemption features;
19. Mode of transfer/redemption/conversion;
20. Rights, duties and obligations of the Trustee;
21. Rights, duties and obligations of the issuer;
22. Rights and obligations of the investors;
23. Accounts and audit;
24. Term and termination of the Trust deed;
25. Retirement and substitution of the Trustee and appointment of new Trustee;
26. Meeting of holders of the debt securities with power, scope and quorum of the meeting;
27. Amendment provisions of the Trust Deed;

Each page of the draft deed of trust to be duly signed and stamped by the chief executive officers of the issuer and the trustee.

Schedule "D"
(See Rule: 3)

Due Diligence Certificate of the Trustee

To,
The Chairman
Securities and Exchange Commission

Sub: Issuance of (number & type of the debt securities) of Tk. (face value) each of(Name of the Issuer)

We, the under-noted trustee to the above-mentioned forthcoming issue, state as follows:

1. We, while act as trustee to the above mentioned issue on behalf of the investors, have examined the draft Information Memorandum, legal and other documents and materials as relevant to our decision; and
2. On the basis of such examination and the discussions with the issuer, it's directors and officers, and other agencies; independent verification of the statements concerning objects of the issue and the contents of the documents and other materials furnished by the issuer; -

WE CONFIRM THAT:

- (a) all information and documents as are relevant to the issue have been received and examined by us and the draft IM, draft Deed of Trust and draft Subscription Agreement forwarded to the Commission has been approved by us;
- (b) we have also examined all documents of the assets to be charged with the Trust and are satisfied that the assets bear the value, title and charge status as disclosed in the IM;
- (c) while examining the above documents, we find that all the requirements of the Securities and Exchange Commission (Private Placement of Debt Securities) Rules, 2012 have been complied with;
- (d) we shall act as trustee to the issue as mentioned above as per provisions of the Deed of Trust to be executed with the issuer and shall assume the duties and responsibilities as described in the Deed of Trust and in the IM;
- (e) we shall also abide by the Securities and Exchange Commission (Private Placement of Debt Securities) Rules, 2012 and conditions imposed by the Commission as regards of the issue; and
- (f) the above declarations are unequivocal and irrevocable.

For Trustee
Sd/-
Chief Executive Officer
(Name of the Trustee)

Schedule "E"
(See Rule: 9)

Format and contents of the Application for registration of Trustee of a debt security

- To,
The Chairman
Securities and Exchange Commission
1. Information:-
 - (a) Name of the applicant;
 - (b) Legal status of the applicant;
 - (c) Address and telephone numbers of the applicant;
 - (d) Name, address and telephone number of the compliance officer for the issue;
 - (e) Date of incorporation
 - (f) Date of commencement of business;
 - (g) Authorized capital;
 - (h) Paid-up capital;
 - (i) Net worth;
 2. Annexure:-
 - (a) Certified copy of memorandum and articles of association;
 - (b) Certified copy of certificate of incorporation and certificate of commencement of business;
 - (c) Certified copy of particulars of directors;
 - (d) Certified copy of return of allotment of shares/annual summary of share capital;
 - (e) Latest audited financial statements;
 - (f) Resolution of the board of directors deciding to act as trustee to the issue;
 - (g) An affidavit to the effect that neither the trustee, nor any of its affiliates or directors are anyway connected with the issuer of the proposed debt securities and that it has no track record of default, negligence or noncompliance of any of the securities laws discharging its duties, if the proposed trustee is in any way connected with the securities market;
 - (h) Description of manpower and logistic support to discharge its duties as a trustee;
 - (i) Bio-data of the Chief Executive Officer and Compliance Officer;
 - (j) CIB undertakings, where applicable.
- Sd/-
Chief Executive Officer
Name of the proposed Trustee