

**AUGUST 13, 2020**

**SHARIAH STRUCTURE OF THE CREDIT GUARANTEE TRUST SCHEME FOR LOW-INCOME HOUSING (TRUST)**

The Government of Pakistan (GOP) has initiated a Low cost housing scheme under a Naya Pakistan Housing Program. GOP has invited the financial institutions to participate in this scheme.

The participating financial institutions shall extend the low cost housing finance facilities to their customers. Usually the credit worthiness of low-income customer segment is low and financial institutions usually avoid extending such facility to them. The Government of Pakistan in order to promote low cost housing sector created a **CREDIT GUARANTEE TRUST SCHEME FOR LOW-INCOME HOUSING (TRUST)**, a trust established and existing under the laws of the Islamic Republic of Pakistan, acting through its trustee, Pakistan Mortgage Refinance Company Limited.

The Government of Pakistan and the Trustee have entered into a Trust Deed for the execution of a Trust, which shall provide partial credit guarantee for low-income housing (Guarantee Scheme). The Guarantee Scheme shall partially alleviate the credit risk entailed by providing housing finance to low-income customers, particularly those in the informal sector and will encourage the banks to provide housing finance to this group of customers.

The Government has appointed PMRC as the Trustee to manage, operate and administer the Trust with a seed capital of equivalent PKR of US\$10 million.

Once the Islamic Participating Financial Institutions (IPFI) agree to extend low cost housing facility to their customers using their House Financing Product as per Eligibility criteria of the scheme, the Trust shall cover the risk of this portfolio. The Trust, in order to promote this sector shall provide loss guarantee/coverage to the financial institutions against any overdue rental/profit or default by the customers in making promised unit purchase/buy-out payments subject to

- a) It shall not exceed by 40% or any other amount as determined by the Strategic Sponsors from time to time, of their low cost housing portfolio; and
- b) Total claim against each Eligible House Finance Facility (including guarantee amount and tabarru) shall not exceed the outstanding finance amount.

The Trust shall invest the Funds received from GOP in Shariah compliant avenues such as Sukuk etc. Claim payment for overdue profit/rental amount will be covered under the Guarantee and in addition to it the trust will give provide coverage for the outstanding buyout units as Tabarru.

In order to cover the actual administrative cost related to the aforesaid Guarantee provided for the overdue profit/rental (and not to Tabarru), estimated at 2% of the outstanding finance of the covered housing portfolio (or any other percentage) shall be paid upfront by the IPFI to the Trust for guarantee term of 10 years at the time of signing of Guarantee Agreement (as Administrative Cost of Guarantee). The Trust shall not utilize this amount in the claim settlement of upcoming losses of Islamic financial institutions. In order to keep this amount more transparent, the Trust shall keep it in a separate Shariah Compliant Bank Account/ in separate Shariah compliant investment avenues. Further, External Auditors shall provide a certificate assuring that the Trust has utilized this Administrative Cost of Guarantee to cover the actual administrative cost related to the guarantee.

The overall Islamic Credit Guarantee scheme is based on the concept of Kafalah and Conditional Tabarru<sup>1</sup>. Under this Guarantee & Conditional Tabarru arrangement where the trust is

<sup>1</sup> بخلاف باب البيع بأن من باع شيئاً ثم تبرع إنسان بأداء الثمن ثم فسخ البيع بالرد بالعيب أو بوجه من الوجوه أن للمتبرع أن يسترد ما دفع؛ لأن الدفع كان بحكم العقد وقد انفسخ ذلك العقد، وكذلك لو تبرع رجل بأداء المهر عن الزوج ثم ورد الطلاق قبل الدخول أنه يسترد منها النصف؛ لأن الطلاق قبل الدخول فسخ من وجهه، ولو كانت الفرقة من قبلها قبل الدخول بما فله أن يسترد منها كل المهر، ولا يكون المهر للزوج بل يكون للمتبرع لانفساخ النكاح، هذا كله إذا أدى القابل فلو امتنع القابل عن الأداء لا يطالب بالأداء إلا إذا ضمن، فحينئذ يؤخذ به بحكم الضمان. [بدائع الصنائع في ترتيب الشرائع (4 / 137)]

كما لو تبرع بقضاء دين غيره ثم ظهر أنه لم يكن على المتبرع عليه دين كان للمتبرع أن يرجع بما يتبرع به.

والجواب أن المتبرع إذا حصل مقصوده من التبرع لا يكون له أن يرجع بما يتبرع به كما لو وهب لذي رحم محرماً ووهب الأجنبي فعوضه، وإذا لم يحصل مقصوده من التبرع كان له أن يرجع بما يتبرع به ففي مسألة قضاء الدين مقصود تبرع ذمة من عليه، وهذا المقصود لم يحصل لأن تبرع الفارغ عمال فكان له أن يرجع، أما في مسئلتنا مقصوده تحصيل عتق العبد، وهذا المقصود قد حصل فلا يكون له أن يرجع. [أخبط البرهاني في الفقه النعماني (4 / 115)]


فإن قيل: المتبرع يرجع بما تبرع إذا لم يحصل مقصوده من التبرع، كمن تبرع بأداء الثمن عن المشتري ثم هلك المبيع قبل القبض أو استحق فإن له الرجوع لعدم حصول مقصوده من التبرع وهو سلامة المبيع للمشتري. أوجب بأن المتبرع عليه هو المكاتب من وجه من حيث إن مقصود الأذن قضاء دينه من ماله وبعد العجز صار عبداً له من كل وجه والمولى لا يستوجب على عبده شيئاً بخلاف البائع فإن ذمته محل صالح لوجوب دين المتبرع فثبت له حق الرجوع إذا لم يحصل مقصود. [العناية شرح الهداية (9 / 198)]

providing coverage to the IPFIs incurring/classifying loss (of profit/rental & financing amount) as per PRs in their low cost housing portfolio. At any point of time, if the facility is settled in full by the customer or regularized through restructuring or the IPFI sells the asset in the market and recovers the loss through proceeds and/or any other source(s), the recovery amount so received shall be returned to the Trust up to the amount of Guarantee & Tabarru arrangement paid by the Trust to IPFI.

Financier (IPFI) shall be entitled to submit a claim in respect of an Eligible Housing Facility covered under the arrangement subject to the fulfillment of all of the following conditions:

- (a) the claim arose during the Guarantee Term;
- (b) as of the date of the Claim Request, the Eligible Housing Facility has been in arrears and has been classified by the Financier as 'loss' in accordance with the Prudential Regulations;
- (c) the Financier has taken all actions for the recovery, rescheduling and/or restructuring in term of Islamic principles of the Eligible Housing Facility in accordance with the Prudential Regulations and the Scheme Manual;
- (d) no Termination Event has occurred or is continuing;
- (e) the Trust's liability in relation to such Eligible Housing Facility does not otherwise stand discharged on account of a Discharge Event.

Master Guarantee Agreement, Guarantee Agreement, Islamic Scheme Manual (Islamic Guide) and all other Guarantee documents of the Credit Guarantee Scheme related to the Islamic Guarantee Product for IPFI will be prepared in accordance with this Fatwa.

والله سبحانه وتعالى اعلم  
E.W. 

Mufti Ehsan Waquar Ahmad  
Shariah Advisor