

Securities and Exchange Commission of Pakistan

Securities Market Division

S.E.C.P.

No. 4(BRP-346) PSX/SMD/19

July 02, 2020

The CEO,
BRR Financial Services (Pvt.) Limited,
18th Floor, BRR Tower,
Hassan Ali Street, I.I. Chundrigar Road,
Karachi.

SUBJECT: Order in the matter of application for grant of Securities Broker license under the Securities Brokers (Licensing and Operations) Regulations, 2016

Please find enclosed herewith copy of order dated July 02, 2020 on the subject noted above for your record and necessary action.

Yours truly,

Asad Ullah Gondal
Deputy Director (PRDD)

Copy To:-

✓ The MD, PSX, **Karachi.**



Securities and Exchange Commission of Pakistan
Securities Market Division
Policy, Regulation and Development Department

**APPLICATION FOR GRANT OF SECURITIES BROKER LICENSE UNDER
REGULATION 8 OF THE SECURITIES BROKERS (LICENSING AND
OPERATIONS) REGULATIONS, 2016**

Name of Applicant: BRR Financial Services Private Limited

Name of directors/sponsors: **Sponsor(s):**
i) BRR Guardian Modaraba
Directors:
i) Iqbal Ahmed
ii) Naseem Akhtar
iii) Syed Iqbal Hassan

Date of receipt of application: December 16, 2019

Date of Order: July 02, 2020

ORDER

This Order shall dispose of an application duly recommended under regulation 5 of the Securities Brokers (Licensing and Operations) Regulations, 2016 (“the Regulations”) forwarded under regulation 5(4) through the Pakistan Stock Exchange Limited (PSX) for seeking approval of the Commission to grant license to BRR Financial Services (Pvt) Limited (**the Company/Applicant**) under regulation 8 (1) thereof.

2. The aforesaid application made on Form-A-I of the Regulations was accompanied by the following information / documents:
 - (i) The documents information required under Annexure-A-I to Form-A-I; and
 - (ii) Affidavits from directors/sponsors/senior management officers.
3. After perusal of documents/information provided by the Applicant, it has been observed that;
 - a) BRR Guardian Modaraba (“BRRG”) is the sponsor of the Applicant. The shareholding pattern of the Applicant is as under;

Shareholding Pattern of BRR Financial Services (Pvt) Ltd as on December 31, 2019		
Name	Shareholding	Percentage
BRR Guardian Modaraba (sponsor)	5,499,997	99.99%
Iqbal Ahmed (CEO)	1	>0.01%
Naseem Akhtar (Director)	1	>0.01%
Syed Iqbal Hassan (Director)	1	>0.01%
Total	5,500,000	100%



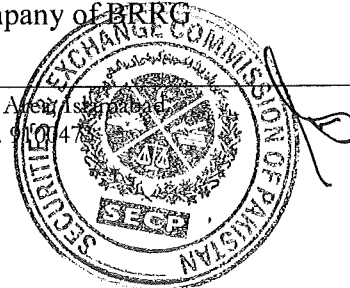
- b) The shareholding pattern of sponsor of the Applicant i.e BRRG revealed that Mr. Ayaz Dawood and Mr. Rafiqe Dawood are shareholders/directors of BRRG. The shareholding pattern of BRRG is as under;

Shareholding Pattern of BRR Guardian Modaraba as on December 31, 2019		
Associated Companies	Shareholding	Percentage
B.R.R. Investment (Pvt) Limited	13,883,095	16.08%
Equity International (Pvt) Limited	2,427,271	2.81%
Dawood Family Takaful Limited	5,328,499	6.17%
Directors		
Rafique Dawood (Chairman)	363,800	0.42%
Ayaz Dawood (CEO)	10,441,584	12.09%
Syed Ali Raza (Director)		
Mr. Waqas Anwer Qureshi (Director)		
Others	53,916,014	62.25%
Total	86,362,263	100%

- c) BRR Investment (Pvt) Ltd (“BRR”) is the management company of sponsors (“BRRG”) of the Applicant and its shareholding pattern is as under;

Shareholding Pattern of BRR Investment (Pvt) Ltd as on December 31, 2019			
S. No.	Name	Shareholding	Percentage
1	First Dawood Investment Bank Ltd	4,762,100	41.6%
2	Mr. Rafique Dawood (Sponsors)	4,030,750	35.2%
3	Mr. Ayaz Dawood (Sponsors)	1,143,500	10.0%
4	Mr. Farooque Dawood (Sponsors)	750,000	6.6%
5	Ms. Tara Uzra Dawood (Sponsors)	474,250	4.1%
6	Dawood International (Pvt) Ltd (Sponsors)	249,500	2.2%
	Dawood Family/Group (Total)	11,410,100	99.7%
Others		Holding	Percentage
1	Mr. Ansar Ali Farooque	22,900	0.2%
2	Mr. Faisal-ur-Rahman	5,000	0.0%
3	Mr. Waqas Ahmed Qureshi	500	0.0%
4	Syed Ali Raza	500	0.0%
	Total	11,439,000	100%

4. The review of shareholding pattern of BRR revealed that;
- a. Mr. Ayaz Dawood and Mr. Rafiq Dawood hold 45% shareholding (directly) and 49% shareholding (indirectly in BRR) and are current sponsors/ beneficial owner of BRR of the management company of BRRG



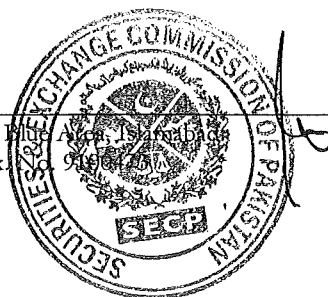
- b. Mr. Ayaz Dawood who is the sponsor of the Applicant is also sponsor of BRRRI and have direct shareholding of 10% in BRRRI.
- c. Dawood Family members, by virtue of shareholding (61.3%), have control (directly/indirectly) in BRRRI, and therefore ultimately have control on the affairs of BRRG.
- d. Mr. Ayaz Dawood and Mr. Rafiq Dawood hold positions of CEO and Chairman of BOD of BRRG respectively.
5. The sponsors of BRRRI also hold shares in another brokerage house namely **Dawood Equities Limited (“DEL”)** which is a licensed securities broker under the Regulations.
6. The share holding pattern of Dawood Equities Ltd as on December 31, 2019 is as under;

Shareholding Pattern of Dawood Equities Limited as on December 31, 201			
S.no	Name	Shareholding	Percentage
1.	BRR Guardian Modaraba (Sponsor)	1,800,000	7.20%
2.	Equity International (Private) Limited (Sponsor)	1,733,500	6.93%
3.	BRR Investment (Private) Limited	690,000	2.80%
4.	Ayaz Dawood (sponsor)	4,822,131	19.30%
5.	Rafique Dawood	524,800	2.10%
6.	Dawood Family/related persons	1,094,350	4.38%
7.	Naseem Akhter (Director on BRRG)	874,756	3.50%
8.	Asim Abdul Ghani	2,513,000	10.05%
9.	The Bank of Khyber	3,750,000	15%
	Sub- total	17,802,537	71%
10.	Others	7,197,463	29%
	Total	25,000,000	100%

- a) The shareholding pattern of Equity International (Pvt) Ltd is as under;

Key Shareholding of Equity International (Pvt) Limited as on December 31, 2019		
Name	Shareholding	Percentage
B.R.R. Investments Private Limited	1,543,500	49%
Ayaz Dawood	776,000	24.53%
Rafique Dawood	200,000	6.53%
Robert Fleming Nominees Ltd	630,000	20%
Total	3,150,000	100%

- b) The Board of Directors of the DEL is as under;



S. No	Name	Designation
1.	Mr. Abdul Aziz Habib	CEO/Director
2.	Mr. Junaid Zakaria Dada	Chairman
3.	Mr. Asim Iftexhar	Independent Director
4.	Mr. Khalid Rafique	Sponsors Representative – Equity International (Pvt) Limited
5.	Mr. Saifullah	Non- Executive
6.	Mr. Muhammad Abbas	Sponsors Representative – Equity International (Pvt) Limited
7.	Ms. Sobia Saif	Non Executive, Minority Representative

7. In order to further proceed in the matter, the Applicant vide hearing notice dated April 28, 2020 accorded an opportunity of personal hearing. The Applicant submitted its response to the hearing notice vide letter dated May 7, 2020 and also appeared for personal hearing on May 08, 2020 through its CEO i.e. Mr. Iqbal Ahmed along with Company Secretary of BRRGM i.e. Mr. Tahir Mehmood. During the hearing proceedings, the Authorized Representatives reiterated the argument as submitted in their response to the hearing notice which is reproduced here below;

“According to the notice issued by your good office two assumptions have been made; one, that Mr. Ayaz Dawood and Mr. Rafique Dawood are sponsors of BRR Financial; secondly, said two individuals also have controlling interest in DEL.

With due respect it is submitted that both the above observations are not correct. Let us discuss the same separately:

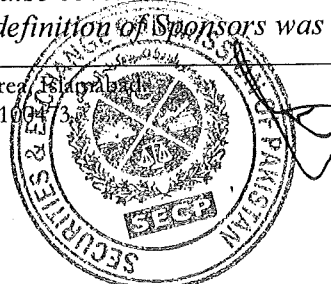
a. Whether Mr. Ayaz & Rafique are sponsors of BRR Financial?

BRR Financials is a wholly owned subsidiary of BRR Guardian Modaraba (BRRGM); so sponsor of BRR Financial is BRRGM. Therefore, the factual position is very clear that Mr. Ayaz Dawood and Mr. Rafique Dawood are not sponsors of BRR Financials.

The matter ends here because the said Regulation 4(d) speaks of sponsor of Applicant and not of sponsor of Applicant’s sponsors. However, for the sake of arguments let us also consider that who are the sponsors of BRRGM. The term sponsor is exclusively defined in the Regulations as a person who

- (i) has contributed initial capital in the company*
- (ii) has the right to appoint majority of directors on the board of the company*
- (iii) has control of the company*

All the three elements of the definition of sponsor are in relation to a ‘Company’. The term ‘Company’ is defined in the Securities Act, 2015 which has adopted the definition provided in the Companies Ordinance, 1984, which shall be read as reference to the re-enactment, i.e. the Companies Act, 2017, and according to said legislation the ‘Company’ is a company formed under the Companies Act, 1913, Companies Ordinance, 1984, Companies Ordinance, 2016 or the Companies Act, 2017. A Modaraba is not a Company in accordance with the definition of Company adopted by the Securities Act, 2015 which is followed in the Regulations by virtue of Regulation 2(2). It is noteworthy that the legislature has not adopted the well known concepts of ‘Associated undertakings’ or ‘Associated Companies’ as were defined in the Companies Ordinance, 1984, and which also covers such entities as do not fall within the purview of ‘Company’. Rather a restricted definition of Sponsors was used which



term can only apply in relation to a Company. As Modaraba is not a company and it does not have board of directors so there is no concept of 'Sponsors of Modaraba' in the context of relevant regulations. We are conscious that Modaraba can sue or be sued in its name in pursuance of the Ordinance of 1980, which is similar to the rights available to a registered partnership firm but in any case it does not form with a well defined term 'Company'. Perhaps, this is so because Modaraba does not have board of directors, it does not have voting rights rather it is a mode of financing and a business model in which funds are contributed by several persons.

It is further added that Mr. Ayaz Dawood and Rafique Dawood have investment in the funds of BRRGM to the extent of 12.53% only and by any stretch of imagination these two individuals cannot use BRRGM to appoint majority directors in BRR Financial. **Please remember the Modaraba Certificates do not have voting rights.** Thus, the said individuals do not have control over the Applicant and therefore, the assumption made in the notice in this regard is not made out from facts of the matter.

a. Whether Mr. Ayaz Dawood and Rafique Dawood have controlling interest in DEL?

The second limb of Regulation 4(d) is existence of controlling interest in existing security broker viz, DEL. It is noteworthy that in relation to existing broker the draftsman has not used the terms like 'sponsors' or 'associated company' rather restricted the statute to the 'controlling interest' only. The word 'control' is defined in section 2(xiii) of the Securities Act, 2015, which means power to appoint majority directors or to control management .

While determining the controlling interest in DEL it is relevant to consider that DEL is a listed company having seven directors and it has free float equity proportion of **about 45%**. In DEL combined shareholding of Mr. Ayaz Dawood and Mr. Rafique Dawood is only 21.39% which does not give them controlling interest. With this shareholding the said individuals cannot appoint majority of directors in DEL nor can control the management or policy decision of the listed company. **Also they have never been on the Board of DEL.**

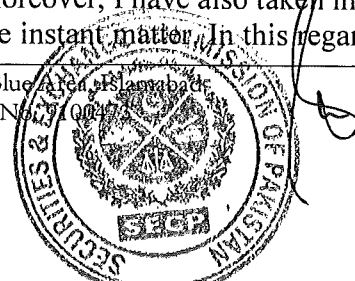
In view of above, it is clear from the contents of the show cause notice as well as from above explanation that Mr. Ayaz Dawood and Mr. Rafique Dawood do not have controlling interest in DEL, therefore, the Regulation 4(d) is not attracted.

We hope the above would have satisfactorily answered the observation of SECP and it is established beyond doubt that said two individuals are neither sponsors of the Applicant nor do they have controlling interest in DEL thus Regulation 4(d) does not come into play. Accordingly, BRR Financial is eligible for registration as a Security Broker."

8. During the hearing, the Company Secretary of BRRGM also explained that BRRGM had sold its shareholding of 2.499 million shares in DEL on February 19, 2013. However, the share registrar of DEL informed that out of 2.499 million shares, 0.6 million shares were transferred to Mr. Ayaz Dawood/Mr. Rafiq Dawood and rest of 1.8 million shares are still appearing in the name of BRRG.

9. The applicant also requested the Commission to take a lenient view and requested to grant license with a condition that Mr. Ayaz Dawood and Mr. Rafiq Dawood shall reduce their shareholding in DEL.

10. I have examined the written and verbal submissions of the CEO of the Applicant as well as documents/information available on record. Moreover, I have also taken into account the relevant regulatory requirements applicable in the instant matter. In this regard, attention is



invited to Section 2(xiii) and Section 69(1) and 2(f) of the Act and regulations 2(i) ,4(d), 8(1)(a) & 10(1) of the Regulations which are reproduced below for reference:

Securities Act, 2015

"Section 2(xiii) "control" includes the right to appoint majority of directors or to control management or policy decisions, exercisable by a person individually or through any person acting in concert, directly or indirectly, whether by virtue of his shareholding, management right, shareholders agreement, voting agreement or otherwise"

"Section 69. Grant of licence.

- (1)** *Subject to the provisions of this Act, the Commission may, on an application duly made in accordance with section 68, grant the licence or refuse the application.*
- (2)** *The Commission shall grant a licence if satisfied that the applicant:*
- (f)** *satisfies such other conditions as may be prescribed."*

Regulations 2(i) of the Securities Brokers (Licensing and Operations) Regulations, 2016

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

(i) "sponsor" means:

- a)** *a person who has contributed initial capital in the company or has the right to appoint majority of the directors on the board of the company directly or indirectly; and*
- b)** *a person who replaces the person referred to in clause (a) above; and*
- c)** *a person or group of persons who has control of the company whether directly or indirectly"*

Regulations 4(d) of the Securities Brokers (Licensing and Operations) Regulations, 2016

"4. Eligibility criteria for licensing of a securities broker. - *Subject to compliance with the provisions of the Act and the Futures Act, a company may apply to the Commission for licence as a securities broker, if-*

- (d)** *the applicant and its sponsors do not have controlling interest in any other company holding licence as a securities broker"*

Regulations 8(1)(a) of the Securities Brokers (Licensing and Operations) Regulations, 2016

"8. Grant of licence. - (1) *The Commission, while considering the application for granting a licence, shall inter-alia take into account the following matters, -*

- a)** *that the applicant meets the requirements of the Act and these regulations"*



11. In view of available record, the response submitted by the Applicant, arguments presented during the hearing in the matter and prevalent regulatory frameworks, my observations in the matter are as under;

- a) Dawood Family including Mr. Ayaz Dawood, by virtue of shareholding (61.3%), have control (directly/indirectly) in BRRI, and therefore ultimately have control on the affairs of BRRG which is sponsors of the Applicant.
- b) Mr. Ayaz Dawood and his associated concerns hold 46% (directly/indirectly) shareholding in DEL.
- c) Dawood Family including Mr. Ayaz Dawood, are also the sponsors of the DEL and have control over DEL which is duly evident by the following facts;
 - i) Two directors namely Mr. Muhammad Abbas and Mr. Khalid Rafique are sponsors directors on DEL represented by Equity International (Pvt) Ltd which is 80% owned by Dawood Family members;
 - ii) One director namely, Mr. Saifullah has been associated with DEL since 2011. He had been working as Branch Manager with DEL from 2011 to 2016 and subsequently, in 2016 has been appointed as Director of DEL.
 - iii) One director, Ms. Sobia Saifullah is spouse of Mr. Saifullah and has been appointed on the BOD of DEL.
 - iv) Two directors namely, Mr. Abdul Aziz (CEO) and Mr. Junaid Dada have been associated with DEL since 2008 as Director/Chairman BOD/CEO of the Company.
 - v) Bank of Khyber nominated the director on the board of DEL in October 2012 who resigned in March 2013 and no nominations / representation is there on BOD thereafter.
 - vi) The last two elections of BOD was unopposed as no nomination received from any other shareholder and therefore no voting conducted. Further no objection has been raised by any of the shareholder regarding such appointment of the board of directors.

12. In light of the observations above, the Applicant is found to be not eligible within the provisions cited above, in particular Regulation 4(d) of the Regulations and hence is therefore refused to be granted the license under regulation 10 of the Regulations.

13. In addition to the above it is also pertinent to mention here that the Registrar Modaraba vide order dated May 13, 2020 concluded the inquiry proceedings against the BRRI i.e. the management company of BRRG and found adverse material findings i.e. involvement in misappropriation/mismanagement/fraud/forgery of funds of BRRG. Therefore, keeping in view the previous track record, the Applicant is not eligible for grant of license in the best interest of public at large in general and investors in particular.

14. This order is issued without prejudice to any other action that the Commission may initiate against the Applicant in accordance with the law on the matter subsequently investigated or otherwise brought to the knowledge of the Commission.



(Shauzab Ali)
Commissioner (SMD)