

Draft Regulations for Private Equity and Venture Capital Funds are hereby placed on official website of the Commission. This draft is a consultative document that will be reviewed and modified after stakeholder comments. Comments may be sent to:

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SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
NOTIFICATION

Islamabad, August 13, 2007.

The following draft Private Equity and Venture Capital Fund Regulations, 2007, proposed to be made by the Securities and Exchange Commission of Pakistan in exercise of the powers conferred by section 282B(2) of the Companies Ordinance, 1984 (XLVII of 1984), are hereby published, for the information of all persons likely to be affected thereby, and notice is hereby given that the draft will be taken into consideration after thirty days of its notification.

Any objection or suggestion that may be received from any person in respect of the said draft before the expiry of the aforesaid period of thirty days shall be considered by the Securities and Exchange Commission of Pakistan.

THE PRIVATE EQUITY AND VENTURE CAPITAL FUND REGULATIONS, 2007

CHAPTER – I

Preliminary

1. Short title and commencement. (1) These regulations shall be called the Private Equity and Venture Capital Fund Regulations, 2007, hereinafter referred to as the “Regulations”.

(2) They shall come into force at once.

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

- (i) “Administrator” means a person appointed by the Commission to manage the affairs of a Fund upon cancellation of the license granted to the FMC by the Commission pursuant to sub-regulation (3) of Regulation 16;
- (ii) “Associated Companies” and “Associated Undertakings” have the same meanings as defined in Section 2 of the Ordinance, except that for purposes of these Regulations the threshold mentioned therein shall be read as ten per cent instead of twenty;

- (iii) “Bank Account” means the bank account that is opened and operated solely by the Trustee in consultation with and on advice of the FMC in furtherance of its obligation to protect the interest of Unit Holders;
- (iv) “Close Relative” means spouse, minor children, lineal ascendants and descendants;
- (v) “Commission” means the Securities and Exchange Commission of Pakistan established under the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);
- (vi) “Company” means a company incorporated under the Ordinance;
- (vii) “Connected Person”, in relation to a FMC or a Trustee, means:-
 - a. any Person owning or being able to exercise control over, whether directly or indirectly through Close Relatives, Associated Companies and Undertakings or other entities controlled by such persons, ten per cent or more of the ordinary share capital of the FMC or the Trustee, as the case may be;
 - b. any Person controlled by a Person described in sub-clause (a);
 - c. Associated Companies or Undertakings of the FMC or the Trustee and subsidiaries of such Associated Companies or Undertakings along with all such Persons that are controlled by any of these entities, the FMC, the Trustee or a Company or undertaking in which they hold or control ten percent or more of the voting power;
 - d. a Unit Holder holding, individually or along with Close Relatives or Associated Companies or Undertakings, in excess of ten per cent of the Units;
 - e. senior executive officers, as may be Specified, or the directors of the FMC or the Trustee, as the case may be, or of any of the Connected Persons specified

in sub-clauses (a), (b) and (c);

- (viii) “Constitutive Documents” means principal documents governing the formation of the Fund and include the Trust Deed, the consent letter of the Trustee, the Placement Memorandum, the Subscription Agreement and all related material agreements;
- (ix) “Credit Rating Company” means a credit rating company registered under the Credit Company Rules, 1995;
- (x) “Eligible Investor” means any Person who has executed a declaration, in the form prescribed by the Commission, affirming that such Person has understood the risks involved in investing in a Private Equity Undertaking through investment in Units of a Fund, offered to such Person and that such Person has resources available for making such investment;
- (xi) “Equity” includes paid up capital, general reserves, balance in share premium account, reserve for issue of bonus share and un-appropriated profits or accumulated losses as disclosed in latest annual audited financial statements, excluding deferred tax reserves, surplus on revaluation of fixed assets as described in Section 235 of the Ordinance and treasury stocks and redeemable preference shares;
- (xii) “Fee Schedule” means the schedule of fees appended to these Regulations;
- (xiii) “Foreign Private Equity and Venture Capital Entity” means a Foreign Private Equity and Venture Capital Entity as described in Regulation 4.
- (xiv) “Form” means any of the forms annexed to these Regulations;
- (xv) “Fund Management Company” or “FMC” means a company licensed by the Commission in accordance with Regulation 6 to provide PE & VC Fund Management Services;

- (xvi) “Inspector” means an inspection officer of the Commission or such independent auditor as the Commission may appoint pursuant to sub-regulation (2) of Regulation 48;
- (xvii) “Investible Funds” means capital of the Fund net of expenditure for administration and management of the Fund;
- (xviii) “Key Executives” includes Chief Executive Officer (CEO), Chief Financial Officer (CFO)/Chief Accounts Officer (CAO), Chief Operations Officer (COO), manager and individuals acting in similar capacities irrespective of the designation. “Major Shareholder” means a person who individually or in concert with Close Relatives or Connected Persons holds ten per cent or more of the paid-up share capital of the Company;
- (xix) “NBFC Rules” mean the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003;
- (xx) “Net Asset Value” or “NAV” means the difference between the value of assets and the liabilities of a Fund at the end of every financial year or any other date as required under these Regulations or as Specified, on which valuation is carried out, such difference being computed in the manner, if any, as Specified;
- (xxi) “Ordinance” means the Companies Ordinance, 1984 (XLVII of 1984);
- (xxii) “Placement Memorandum” means a document, or documents issued together, containing information about a Fund in order to invite Eligible Investors to buy Units of such Fund;
- (xxiii) “Private Equity and Venture Capital Fund” or “Fund” means a fund constituted in the form of a closed-end Unit-Trust, vested in a Trustee in terms of a Trust Deed, and managed by an FMC in accordance with these Regulations and that:-
 - a. has a dedicated pool of capital, raised in a manner specified in these

Regulations; and

b. makes investments out of the Investible Funds in accordance with these Regulations;

(xxiv) “Private Equity and Venture Capital Fund Management Services” or “PE & VC Fund Management Services” mean the management and administration and advisory services provided in respect of a Fund in accordance with these Regulations;

(xxv) “Private Equity Undertaking” means any company, entity or undertaking that is the recipient of funds or investment from a Fund;

(xxvi) “Promoters” means a Person who has made an application to the Commission to form an FMC under Section 282C of the Ordinance;

(xxvii) “Register” means the register of Unit Holders of a Fund kept and maintained in accordance with these Regulations;

(xxviii) “Record” includes all documentary and electronic materials created, generated, sent, communicated, received or stored regardless of physical form or characteristics;

(xxix) “Schedule” means a schedule to these Regulations as may be Specified;

(xxx) “Special Resolution” means a resolution that has been passed by a majority of not less than three-fourths of such Unit Holders as are entitled to vote and present in person or by proxy at a duly convened meeting;

(xxxi) “Specify” or “Specified” means a prescription, direction, stipulation or specification made by the Commission from time to time pursuant to the Ordinance, these Regulations or any other applicable law;

(xxxii) “Subscription Agreement” means the subscription agreement referred to in Regulation 37;

(xxxiii) “Trust” means a trust established by a deed under the provisions of the Trusts Act, 1882 (II of 1882);

(xxxiv) “Trust Deed” means the deed of trust entered into between an FMC and a Trustee that governs the establishment and operation of a Fund;

(xxxv) “Trustee” means a trustee, appointed in respect of a Fund pursuant to Regulation 25 and in terms of the Trust Deed;

(xxxvi) “Unit” means the legal interest held by an Eligible Investor in the Fund for a price; and

(xxxvii) “Unit Holder” means the person who is legal owner of the Units of the Fund.

(2) Words and expressions used but not defined in these Regulations shall have the same meaning as assigned to them in the Ordinance, the Securities and Exchange Commission of Pakistan Act (XLII of 1997), the Securities and Exchange Ordinance, 1969 (XVII of 1969) and the NBFC Rules.

CHAPTER – II

The Fund Management Company

3. Eligibility Conditions for Establishment of an FMC.- An FMC may be established if each of its Promoters, proposed directors, chief executive and chairman of the Board of Directors fulfil the conditions as laid down in the ‘fit and proper’ criteria specified by the Commission in Schedule I.

4. Foreign Private Equity and Venture Capital Entity.- (1) An entity set up outside Pakistan for the purpose of managing or investing private equity or venture capital, by whatever name described, that is regulated under the laws of a jurisdiction notified by the Commission as an acceptable jurisdiction for the purpose of these Regulations, may make investments in Pakistan if it has, for information purposes, been registered with the Commission as a Foreign Private Equity and Venture Capital Entity, after due compliance

with such conditions as may be Specified for registration.

(2) Such Foreign Private Equity and Venture Capital Entities may hold, invest or manage in Pakistan only such funds as have been collected outside Pakistan and have been transferred to Pakistan for the purpose of investment therein. Repatriation of the principal amounts so transferred to Pakistan and all gains accruing thereon shall be in accordance with the applicable laws of Pakistan.

(3) Any entity as described in sub-regulation (1) of this Regulation, that is incorporated outside Pakistan and has registered with the Commission in accordance with this Regulation, is exempt from compliance with these Regulations except for this Regulation and subject to the condition that it will not invite any investments from individuals or institutions in Pakistan;

Provided that a Foreign Private Equity and Venture Capital Entity shall disclose to the Commission the names, particulars and such other information as the Commission may specify from time to time, with regard to its Promoters and directors, Major Shareholders and Key Executives who are Pakistani nationals or foreign nationals of Pakistani origin.

5. Permission to form an FMC.- The Promoters shall make an application to the Commission, as set out in Form I, providing information specified therein, along with such other documentation as may be required by the Commission, and receipt evidencing the payment of a fee as specified in the Fee Schedule.

6. Grant of permission.- The Commission may, if it is satisfied that the Promoters and proposed directors satisfy the fit and proper criteria specified in Schedule I, permit such persons in writing to incorporate a Company authorized to apply for a license pursuant to Regulation 9, to provide PE & VC Fund Management Services in accordance with the provisions of these Regulations.

7. Validity of permission.- The permission granted to establish an FMC under Regulation 6 shall be valid for a period of six months unless extended under special circumstances by the Commission in writing for a maximum period of three months, on the application of the Promoters made before the expiry of stipulated period of six months.

8. Incorporation of company.- During the validity of the permission or extension thereof under Regulation 7, the Promoters of the FMC shall get such a Company incorporated under

the Ordinance.

9. Application for license.- The Company incorporated pursuant to Regulation 8 shall make an application to the Commission for a license to undertake the business of PE & VC Fund Management Services. The said application shall be submitted to the Commission in the form as set out in Form II along with a fee as specified in the Fee Schedule for obtaining such license.

10. Grant of license. - (1) The Commission, after making such inquiry and obtaining such further information as required, may grant a license to the applicant to undertake PE & VC Fund Management Services in exercise of its powers under Section 282C of the Ordinance, in such form set out in Form III of these Regulations, if it is satisfied that the Company has fulfilled the following conditions in addition to the conditions specified in Regulation 3:

- (a) it is incorporated as a Company with at least two directors;
- (b) it has a paid up capital of at least Rupees 250 million or such other amount as may be Specified;
- (c) it has adequate financial, technical, organizational and human resources and appropriate systems, procedures and processes in place to provide PE & VC Fund Management Services in a professional, proper and efficient manner;
- (d) it has allotted at least twenty five per cent of the paid-up share capital to its Promoters, unless otherwise permitted by the Commission pursuant to Regulation 5;
- (e) its Promoters, Major Shareholders and directors have deposited their shares with Central Depository Company of Pakistan Limited in an account marked as blocked and such shares shall not be sold or transferred without prior approval of the Commission and shall be kept unencumbered. In case of physical shares lodged with the Commission, such shares shall be in a jumbo lot duly stamped as “not to be sold or transferred without prior approval of the Commission and to be kept unencumbered”;
- (f) its Promoters, Major Shareholders and directors have given an undertaking that they shall not enter into any agreement for sale or transfer of their shares in any manner without the prior written approval of the Commission;
- (g) it has given an undertaking that no change in the Memorandum of Association, other than increase in the authorised share capital, shall be made without prior

approval of the Commission;

- (h) it has given an undertaking that the conditions of operation as set out in these Regulations or Specified or any direction given by the Commission shall be duly complied with;
- (i) it has furnished an undertaking that within ninety days of the grant of license it shall furnish evidence to the satisfaction of the Commission that the personnel employed by it for KeyExecutive positions, research or other related functions possess sufficient educational qualifications and professional experience to undertake the proposed form of business of the FMC; and
- (j) the CEO of the Company is a full-time employee and does not hold such position with any other Company;

(2) No person may consent to or present himself for appointment or election to the board of directors of an FMC without the prior approval of the Commission, except as otherwise permitted under these Regulations.

11. Validity of license.- (1) The license granted by the Commission under Section 282C of the Ordinance read with Regulation 10, shall be valid for a period of one year and shall be renewable annually on an application by the FMC that shall be submitted to the Commission before the end of the validity of the license, as set out in Form IV of these Regulations along with payment of a fee as specified by the Commission in the Fee Schedule, unless the license is cancelled or suspended by the Commission pursuant to these Regulations.

(2) Without prejudice to the terms and conditions prescribed in Regulation 10, the Commission may, subsequent to the grant of license to the FMC, specify any other condition as it may deem necessary.

12. Commencement of operations by FMC.- An FMC shall commence its business and operations only after it has been issued a license in terms of Regulation 10 and all conditions contained therein have been complied with. In case an FMC fails to commence its business within six months from the date of issuance of the license aforesaid, the Commission may cancel the licence issued to the FMC.

13. Conditions applicable to FMC.- (1) An FMC shall:-

- (a) maintain such books of accounts and other Record as Specified, which shall depict a true and fair view of its state of affairs, for a period of ten years, including:

- i. journals, cash books and other Record of original entry forming the basis of entry in any ledger;
 - ii. ledgers (or other comparable record) reflecting assets, liabilities, income and expenses along with all supporting Record;
 - iii. ledgers (or other comparable record) showing securities in the portfolio;
 - iv. Record of transactions with banks; and
 - v. Record of the meetings of the board of directors, and all relevant committees;
- (b) appoint in respect of the Fund upon its establishment, and upon occurrence of any vacancy, with the consent of the Trustee, an auditor who shall be from among the list of auditors approved by the Commission;

Provided that the auditor so appointed is not the auditor of the FMC and has not been the auditor of the Fund for more than three consecutive years;
- (c) appoint an individual having minimum three years of post qualification experience as its financial or chief accounting officer who is:
 - i. a chartered accountant; or
 - ii. a cost and management accountant; or
 - iii. a member of a recognized foreign accountancy organization; or
 - iv. a person having master's degree in commerce or business administration with specialization in finance;
- (d) appoint an individual having minimum three years of post qualification experience as an internal auditor who is:
 - i. a chartered accountant; or
 - ii. a cost and management accountant or a certified internal auditor; or
 - iii. a certified information system auditor; or
 - iv. a member of a recognized foreign accountancy organization; or
 - v. an individual having master's degree in commerce or business administration with specialization in finance;
- (e) appoint its Key Executives subject to fulfillment of the terms and conditions mentioned in the fit and proper criteria specified by the Commission in Schedule I;
- (f) appoint at least two directors who are also its Promoters, for a period of three years from the commencement of its business;
- (g) maintain adequate financial, technical, organizational and human resources, and employ appropriate systems, procedures, processes and personnel to provide PE &

- VC Fund Management Services in a proper and efficient manner on an ongoing basis;
- (h) appoint or change its CEO or any of its directors subject to fulfillment of the fit and proper criteria specified in Schedule I and with the prior approval of the Commission;
 - (i) maintain satisfactory internal controls and written compliance procedures which address all applicable regulatory requirements;
 - (j) prepare its accounts in conformity with the International Accounting Standards notified by the Commission and technical releases issued by Institute of Chartered Accountants of Pakistan from time to time;
 - (k) furnish to the Commission within one month of the close of first and third quarter and within two months of the close of second quarter of its financial year, a balance sheet along with an income statement, cash flow statement and the statement of changes in Equity for the respective quarters, whether audited or otherwise;
 - (l) furnish a copy of its annual report together with copies of the balance sheet, income statement, cash flow statement and statement of changes in Equity along with the auditors report to the Commission or any other Person as required by the Commission within three months of the close of the accounting period;
 - (m) separately disclose in relevant notes to its quarterly and annual accounts all those facilities and exposures whose carrying value exceeds twenty per cent of its Equity;
 - (n) follow directions issued to protect FMCs against their involvement in money laundering activities and other unlawful trades;
 - (o) acquire and maintain the membership of such relevant association as approved by the Commission and follow the code of conduct specified by the said association.
- (2) An FMC shall not:-
- (a) appoint as directors persons who hold such office in any company licensed as an FMC under these Regulations;
 - (b) obtain the management of another Fund, without the prior written approval of the Commission;
 - (c) transfer ownership of controlling shares, merge with, acquire or take-over any other Company unless it has obtained prior written approval of the Commission to the scheme of such transfer, merger, acquisition or takeover;
 - (d) remove its Record or documents relating to its business from Pakistan to a place outside Pakistan without the prior written permission of the Commission;
 - (e) change its CEO or replace any member of the board of director, without the prior written approval of the Commission; and

(f) offer Units of the Fund managed by it for any consideration other than cash.

14. Obligations of an FMC.- An FMC licensed by the Commission shall:-

- (a) ensure that the Fund as a closed end Unit Trust is vested in the Trustee, pursuant to provisions of the Trust Deed, for the benefit of Unit Holders and all transactions undertaken in furtherance of the objects of the Fund are undertaken in the name of the Trustee;
- (b) manage the Fund, in accordance with the Constitutive Documents and all applicable laws in the sole and exclusive interest of Unit Holders, in good faith and to the best of its ability without gaining any undue advantage for itself or any of its Connected Persons;
- (c) carry out all transactions involving the Fund managed by it on an arm's length basis;
- (d) account to the Trustee for any loss in value of the assets of the Fund where such loss is attributable to the FMC;
- (e) obtain prior approval of the Commission in order to delegate one or more of its functions in relation to the Fund, and
 - i. ensure that its delegates have sufficient experience and financial resources at their disposal to enable them to conduct the delegated function;
 - ii. demonstrate that proper due diligence procedures and management or administrative structures are in place for the selection and on-going monitoring of the delegates that are deemed qualified; and
 - iii. ensure that the agreement between the FMC and each of the delegates clearly documents the demarcation of functions between the FMC and the delegatee and the fees payable for such delegated functions;
- (f) be responsible for the acts or omissions of all Persons, howsoever, designated, to whom it may delegate any of its functions as FMC as if such acts or omissions were its own;
- (g) maintain at its principal office proper Record and books of accounts, during the life of the Fund and for a period of five years thereafter, of the activities undertaken in connection with the Fund in order to enable a complete and accurate view to be formed of the assets of the Fund and liabilities as well as the profit and loss accruing to the Fund, and arising out of transactions undertaken with respect to the Fund and of the amounts received by the FMC in respect of issue of Units

- of the Fund and of pay-outs, if any, by way of distributions to the Unit Holders;
- (h) prepare and transmit to the Unit Holders and the Commission within three months of close of the financial year, the annual report, together with a copy of the balance sheet, income statement, cash flow statement, statement of movement in Unit Holders' Fund or net assets/reserves, the report of the auditor of the Fund, and a statement of profit and loss of the FMC in relation to the Fund, and such balance sheet and income statement that shall comply with any requirements that the Commission may from time to time specify in Schedule V;
 - (i) prepare and transmit to the Unit Holders and the Commission, within one month of the close of the first, second and third quarter of the year of account of the Fund, the balance sheet as at the end of that quarter, income statement, a cash flow statement and a statement of changes in Equity for that quarter, whether audited or otherwise;

Provided that the Commission, subject to such conditions as may be Specified, may allow the FMC to transmit the said quarterly accounts to the Unit Holders by placing them on the website of the Fund or the FMC. The FMC shall, however, make available the printed copy to any Unit Holder, free of cost, as and when requested;

- (j) appoint, in respect of the Fund upon its establishment, and upon occurrence of any vacancy;
 - i. with the consent of the Trustee, an auditor who shall be from the list of auditors approved by the Commission,
 - Provided that the auditor so appointed;
 - a. is not the auditor of the FMC; and
 - b. has not been the auditor of the FMC for more than three consecutive years;
 - ii. a qualified Person, in terms of the fit and proper criteria specified by the Commission in Schedule I, designated as Fund Manager for every Fund who shall be responsible for investment management function of the Fund;

- (k) furnish to the Commission, a copy of the annual report of the FMC together with copies of the balance sheet, profit and loss account, cash flow statement, statement of changes in Equity and the report of the auditor within three months of the close of the financial year and a copy of the half yearly report of the FMC together with

copies of the balance sheet, profit and loss account and the report of the auditor within two months of the close of the half year, together with a statement containing the following information, namely:

- i. the total number of Unit Holders of the Fund;
 - ii. particulars of the personnel (executive, research and other) managing the Fund, whether such persons are employees of the FMC or its delegates; and
 - iii. such other information that the Commission may from time to time specify;
- (l) ensure that the Unit Holders are given a minimum thirty-day notice of any material change in the investment policy or objectives of the Fund and, where applicable, the right to vote with respect to such change;
- (m) ensure compliance with any applicable laws, rules and regulations, including notifications, circulars, guidelines and directives issued thereunder, regarding the activities undertaken in furtherance of the objects of the Fund or its administration;
- (n) ensure that a director immediately vacates his position if he becomes disqualified as per the fit and proper criteria specified in Schedule I and inform the Commission of such compliance;
- (o) forthwith inform the Commission in writing if any information or particulars previously submitted to the Commission are found to be false or misleading in any material particular or if there is any change in the information already submitted;
- (p) provide secretarial services, through the office of the company secretary of the FMC, to Unit Holders for the purpose of calling or requisitioning meetings of Unit Holders and for the conduct of voting, by show of hands or if demanded through a poll, at such meetings or at any adjourned meeting. For the purpose of issuance of notice and matters pertaining to the conduct of a meeting of Unit Holders, including the tabling and passing of resolutions, the provisions of the Ordinance applicable to the members of a company shall *mutatis mutandis* be applicable unless specific provision has been made in these Regulations.

15. Suspension of license.- (1) Subject to sub-regulation (2) of Regulation 11, where the Commission is of the opinion that a FMC has contravened any provision of the Ordinance,

these Regulations, any other applicable law, or any guidelines issued thereunder, or is in breach of any material provisions of the Constitutive Documents, or has otherwise neglected or failed to comply with any order or direction of the Commission or carry out its duties to the satisfaction of the Trustee, or the Commission considers that it would be in the interest of the Unit Holders to do so, the Commission may on its own motion or on the report of the Trustee by order in writing, suspend the license of the FMC granted under these Regulations and issue directions to the FMC, including but not limited to:

- (a) cease and desist operations;
- (b) pay compensation to the Unit Holders;
- (c) imposing fine on the FMC or its directors;
- (d) remove the FMC as the manager of the Fund; or
- (e) combining any of the above-mentioned actions.

(2) An FMC removed from the management of the Fund under sub-regulation (1) (d) of this Regulation shall not be paid any compensation for any loss accrued on removal from management.

16. Cancellation of license.- (1) Where the Commission is of the opinion that the FMC has contravened any provision of the Ordinance, these Regulations, any other applicable law, or any guidelines issued thereunder, or is in breach of any material provisions of the Constitutive Documents, or has otherwise neglected or failed to comply with any order or direction of the Commission or carry out its duties to the satisfaction of the Trustee, or has not complied with any such direction issued by the Commission under Regulation 15, or the Commission considers that it would be in the interest of the Unit Holders to do so, the Commission may on its own motion or on the report of the Trustee by order in writing, cancel the license of the FMC granted under these Regulations;

(2) No such orders under Regulation 15 and 16 and directions made thereunder, excluding direction to the FMC to cease and desist or any other action that the Commission is authorized to take under the Ordinance or any other applicable law, shall be made except after offering the FMC an opportunity of being heard.

(3) If the license of the FMC is cancelled under sub-regulation (1) of this Regulation, the Commission may appoint another FMC as a replacement thereof or an Administrator to manage the Fund subject to such terms and conditions as may be Specified, and the FMC whose license has been cancelled shall not be eligible to be granted a license to conduct business as an FMC again.

(4) Upon cancellation of license under sub- regulation (1) of this Regulation, the business of the FMC shall cease and the Commission may move court for winding up of the FMC or take such other action provided under law against the FMC as it deems fit.

17. Voluntary cancellation of license by FMC.- An FMC may apply to the Commission for the cancellation of its license as an FMC if it has, with the prior approval of the Commission, transferred management of the Fund being managed by it to another FMC.

18. Liability of management and other officers upon cancellation of license.- Notwithstanding cancellation of license under these Regulations, the directors and Key Executives of the FMC shall not be absolved of any civil and criminal liability that may have arisen in contravention of these Regulations, the Ordinance, or any other applicable law.

CHAPTER – III

Registration of a Private Equity and Venture Capital Fund

19. Formation of the Fund.- No Fund shall be established unless the FMC has registered the Fund with the Commission under section 282CA of the Ordinance, and no Units shall be offered to any Person unless the Constitutive Documents have been approved by the Commission.

20. Conditions for registration of a Fund.- (1) The Commission may register a Fund specified in the Constitutive Documents, if it fulfils the following conditions:

- (a) the Trust Deed is in such form as specified by the Commission in Schedule II and has been duly registered under the provisions of the Registration Act, 1908;
- (b) the sole object of the Trust is to carry out activities in furtherance of the objects of a Fund through a prudent strategy of investment in accordance with these Regulations for maximizing the return for Unit Holders;
- (c) the Fund, including all investments out of the Fund, shall be managed in compliance with the provisions of the the Ordinance, these Regulations and any other applicable laws;
- (d) Units of the Fund shall, at all times, be held by at least ten Persons and not more than fifty Persons;
- (e) the Fund shall not be involved with any activity except those permitted under

these Regulations and the eligible financial activities associated with the primary objects of the Fund, provided that there is a full and fair disclosure in the Placement Memorandum; and

- (f) the Trust Deed vests the Trustee with power to take all steps necessary for the liquidation of all or any investment made out of the Fund, to wind up the Fund and to also direct the FMC to take such steps as may be directed by the Trustee.

21. Application for registration.- Subject to Regulation 20, an application for registration of a Fund shall be submitted to the Commission by an FMC in the form as set out in Form VI and shall be accompanied by the following information and documents:

- (a) Constitutive Documents of the Fund in accordance with any requirements that the Commission may from time to time specify in Schedule II and III;
- (b) latest audited accounts of the FMC, if applicable, and resumes of its directors;
- (c) latest audited accounts of the Trustee;
- (d) consent letter of the Trustee to act as Trustee; and
- (e) non-refundable application fee as specified by the Commission in the Fee Schedule.

22. Registration of the Fund.- The Commission may register the Fund in the form as set out in Form VII if it is satisfied that the conditions specified in Regulation 20 and 21 have been satisfied.

23. Procedure where registration is not granted.- (1) If after considering an application made under Regulation 21 the Commission is of the opinion that registration should not be granted, it may reject the application after giving the FMC a reasonable opportunity of being heard.

(2) The decision of the Commission to reject the application shall be communicated to the FMC within thirty days of a complete application being filed with the Commission.

24. Cancellation of registration by the Commission.- (1) The Commission may cancel the registration of the Fund after informing the Trustee in a manner it deems fit and after providing the FMC an opportunity of being heard if:

- (a) it determines, after carrying out such investigation as it deems necessary, that such action is in the best interest of Unit Holders;

- (b) Unit Holders, subject to the conditions of the Constitutive Documents, through Special Resolution consent to the cancellation of the registration of the Fund; or
 - (c) the Trustee informs the Commission that continuation of the Fund is not in the best interest of the Unit Holders;
- (2) In case of cancellation of registration of the Fund under sub-regulation (1) of this Regulation, the Commission may cause the winding up of the Fund through a direction to the Trustee, and the Trust Deed shall provide that in such event the Trust shall stand extinguished accordingly.

CHAPTER – IV

Trustee

25. Appointment of Trustee.- Subject to the approval of the Commission, the Trust Deed of every Fund shall specify the Trustee.

26. Trustee and the FMC to be independent.- A Trustee shall not be a Connected Person of any entity licensed as an FMC.

27. Conditions applicable to Trustee.- (1) The Trustee of a Fund shall be:

- (a) a scheduled bank licensed under the Banking Companies Ordinance, 1962 (LVII of 1962), which has been assigned a minimum investment grade rating by a Credit Rating Company, and has been in operation for at least five years; or
 - (b) a trust company which is a subsidiary of a scheduled bank, which has been assigned a minimum investment grade rating by a Credit Rating Company, provided that the scheduled bank has been in operation for at least five years; or
 - (c) a foreign bank operating as a scheduled bank in Pakistan and operating as a trustee internationally which has been assigned a minimum investment grade rating by a Credit Rating Company, and has been in operation for at least five years; or
 - (d) an NBFC, that is not a Connected Person of the FMC nor is itself acting as an FMC, and that has been assigned a minimum investment grade rating by a Credit Rating Company, and has been in operation for at least five years; or
 - (e) such other Person as the Commission may specify from time to time;
- (2) In exercising its authority under Regulation 27, the Commission may consider the

availability of appropriate systems, personnel, management of the Trustee and such other criteria, as may be Specified.

28. Obligations of the Trustee.- The Trustee shall:-

- (a) exercise due diligence and vigilance in carrying out its functions and duties under the Constitutive Documents, these Regulations and all other applicable laws in order to supervise furtherance of the objects of the Fund and to protect the rights and interests of Unit Holders;
- (b) ensure that assets of the Fund are properly held for the benefit of Unit Holders in accordance with the provisions of the Constitutive Documents, these Regulations and all other applicable laws;
- (c) ensure that the funds held in or the investments made out of the Fund are lawfully vested in the Trustee and hold such funds and investments in trust for the Unit Holders in accordance with the law and the provisions of the Constitutive Documents;
- (d) ensure that the investments made out of the Fund are properly identified and held for the benefit of Unit Holders in accordance with the provisions of the Constitutive Documents, these Regulations and all other applicable laws;
- (e) ensure that the Fund and the title to assets of the Fund is lawfully vested in it and hold such assets on behalf of the Unit Holders in accordance with the provisions of the Constitutive Documents, these Regulations and all other applicable laws;
- (f) ensure that the FMC fulfils its obligations under Regulation 14;
- (g) be liable for any negligent act or omission on its part or on the part of any of its delegates resulting in any loss to the Fund or its assets;
- (h) cause a determination of the NAV of the assets of the Fund to be carried out at any time if it or the FMC deem necessary that such valuation will be beneficial for Unit Holders;
- (i) ensure that the issue and transfer of Units of the Fund is carried out in accordance with provisions of the Constitutive Documents and any directions, guidelines and circulars issued by the Commission under the Ordinance, these Regulations or any other applicable laws;
- (j) carry out the instructions of the FMC in respect of investments, unless they are in conflict with provisions of the Constitutive Documents, these Regulations or any other applicable laws;

- (k) ensure that the investment conditions set out in these Regulations, the Constitutive Documents and the conditions of registration of the Fund are complied with;
- (l) take all reasonable care to ensure that all transactions carried out by the FMC in connection with the Fund are conducted at arm's length;
- (m) issue a report to be included in the annual report as well as at the end of each quarter to be sent to Unit Holders stating whether in its opinion the FMC has, in all material respects, managed the Fund in accordance with the provisions of the Constitutive Documents, these Regulations and all other applicable laws, or if the FMC has not done so, specify the deviations and the steps that the Trustee has taken in respect thereof;
- (n) take all reasonable care to ensure that Units are not issued until subscription monies have been paid;
- (o) maintain the Register of Unit Holders and if it delegates its power to maintain the Register to an agent, inform the Commission as to when and to whom it has delegated such power;
- (p) open, for the Fund, a Bank Account and operate it in consultation with and on advice of the FMC in a manner that is not detrimental to the interest of Unit Holders; and
- (q) immediately inform the Commission of any deviation or contravention by the FMC, with respect to the Fund, of the Ordinance, these Regulations or any other applicable laws or any directions and guidelines issued thereunder by the Commission.

29. Retirement of Trustee.- (1) The Trustee may, subject to the prior written approval of the Commission, retire from its office on the appointment of another Trustee identified by the FMC, and the retirement shall take effect from the date of transfer of the Fund and all of its assets to the newly appointed Trustee;

Provided that should the Trustee seek voluntary retirement, it shall pay for the cost of transfer of all assets in the name of newly appointed Trustee.

(2) For the purpose of appointment of a Trustee under sub-regulation (1) of this Regulation, the Trust Deed may be amended in accordance with provisions of the Trusts Act, 1882 (II of 1882).

30. Removal of the Trustee.- The Trustee may be removed by the Commission after serving

a notice in writing to the FMC in any of the following circumstances:

- (a) the Trustee goes into liquidation, becomes bankrupt or has a receiver or administrator appointed over its assets; or
- (b) the Commission itself or on an application by the FMC, for good and sufficient reason, considers that a change in the Trustee is desirable in the interests of Unit holders; or
- (c) a Special Resolution is passed by Unit Holders resolving that the Trustee is liable to be removed in a meeting specifically called for this purpose by the Commission upon petition of Unit Holders holding not less than ten per cent of the outstanding Units, with the Connected Persons of the Trustee abstaining from voting on such resolution.

Provided that no such order shall be made under sub-regulation (b) of this Regulation except after providing the Trustee an opportunity of being heard;

Provided further that should the Trustee be removed by the Commission under sub-regulation (a) or (b) of this Regulation, the Trustee shall pay for the cost of transfer of all assets of the Fund in the name of the newly appointed Trustee.

CHAPTER – V

Investment Conditions and Restrictions

31. Minimum investment in a Fund.- An FMC may raise capital for a Fund from any Eligible Investor whether Pakistani or foreign and whether a resident or a non-resident, through issue of Units in accordance with the following conditions:

- (a) An FMC shall neither make nor accept an offer for subscription to the Units of a Fund of an amount less than twenty five million rupees.

Provided that nothing contained in this clause (a) shall apply to employees or the principal officers or directors of the FMC and the Commission may prescribe the minimum amount of investment that may be accepted from such persons.

- (b) Every investor approached for raising capital for a Fund shall be provided, along with the Placement Memorandum, a declaration to be submitted to the FMC after execution by such investor stating that the investor has carefully examined the Placement Memorandum and that the investor possesses the capacity to undertake the risks as mentioned in the Placement Memorandum.

32. Investment conditions and restrictions. - (1) All investments made or to be made out of the Fund shall be made in a Private Equity Undertaking subject to the following conditions:-

(a) the FMC shall disclose the detailed investment strategy at the time of application for registration of the Fund in the Placement Memorandum; and

(b) the Investible Funds may be invested in a Connected Person of either the FMC or the Trustee, only if adequate disclosure to this effect has been made in the investment strategy as stated in the Placement Memorandum;

(2) In the event that any of the conditions prescribed in sub-regulation (1) of this Regulation is breached, the FMC shall:

(a) promptly inform the Unit Holders and the Commission of the magnitude of the breach, the cause of the breach, and the proposed method of rectification; and

(b) rectify and restore compliance with the relevant condition(s) within such period as the Commission may specify after being informed of the breach.

33. Prohibition on listing.- The Units of a Fund shall not be listed on any stock exchange.

34. Life of the Fund.- A Fund shall be established for a specified time period as provided for in the Placement Memorandum and the Subscription Agreement and liquidated on expiration of such period through realization of all investments made, and after disbursement of proceeds accruing to Unit Holders the Trust shall stand extinguished.

Chapter VI

General Obligations and Responsibilities

35. Prohibition on inviting subscription from the public.- No Person shall issue any document or advertisement inviting offers from the public for the subscription or purchase of Units of a Fund.

36. Private placement.- Subscription to the Fund shall be received only through private placement of Units of the Fund.

37. Placement Memorandum and Subscription Agreement.- (1) The FMC shall for the

purpose of all private placements of Units of the Fund:-

- (a) issue a Placement Memorandum which shall contain details of the terms and conditions subject to which funds are proposed to be raised from Eligible Investors; and

enter into a Subscription Agreement with each Eligible Investor that shall specify the rights and obligations of the FMC, including the obligation to act in accordance with the Placement Memorandum, the rights and obligations of the Eligible Investors as regards the Fund and toward each other;

- (2) The FMC shall file with the Commission for information a copy of the Placement Memorandum and a copy of the Subscription Agreement along with a report of investment commitments made and funds actually collected from Eligible Investors.

38. Contents of the Placement Memorandum and Subscription Agreement.- The Placement Memorandum and the Subscription Agreement shall contain such information as the Commission may specify in Schedule III and IV.

39. Winding up.- (1) A Fund shall be wound up:-

- (a) in accordance with sub-regulation (2) of Regulation 24;
- (b) after the maturity period of the Fund, if any, as specified in the Placement Memorandum, the Subscription Agreement or the Trust Deed;
- (c) if the Unit Holders through a Special Resolution have, subject to the conditions of the Placement Memorandum or the Subscription Agreement and the Trust Deed, agreed that the Fund be wound up; or

if the Commission so directs the Trustee, after carrying out such investigation as may be necessary, in the interests of Unit Holders.

- (2) The Trustee shall intimate the Commission and Unit Holders of the circumstances leading to the winding up of the Fund under sub-regulation (1) of this Regulation.

40. Effect of winding up.- (1) On and from the date of intimation under sub-regulation (2) of Regulation 24, no further investments shall be made out of the Fund.

- (2) Within three months from the date of intimation under sub-regulation (2) of Regulation 24, the assets of the Fund shall be liquidated, and the proceeds accruing to the Unit Holders distributed to them after satisfying all liabilities, provided that the Commission may extend

the period of three months for reasons to be recorded in writing.

(3) Notwithstanding anything contained in sub-regulation (2) of this Regulation and subject to the conditions, if any, contained in the Placement Memorandum or the Subscription Agreement, as the case may be, in-specie distribution of assets of the Fund shall be made by the FMC at any time, including on winding up of the Fund, in accordance with the preference of Unit Holders expressed through a Special Resolution.

Chapter VII


Miscellaneous

41. General Meetings.- The provisions of the Ordinance governing matters relating to general meetings of a company shall *mutatis mutandis* apply to general meetings of Unit Holders of a Fund as if such Unit Holders were shareholders of a company, provided that any Unit Holder who has a conflict of interest in the matter put up for approval shall abstain from voting at the general meeting. For the purpose of meetings of Unit Holders, the company secretary of the FMC shall act as if he was the company secretary of a company of which the Unit Holders were shareholders.

42. Fee payable to the FMC.- The FMC shall be entitled to be paid such fee as may be specified in the Subscription Agreement between the FMC and the Unit Holders and such remuneration shall be chargeable to the Fund as an expense.

43. Monitoring fee payable to the Commission.- A supervisory fee shall be payable on an annual basis to the Commission at such rate as may be prescribed from time to time by the Commission in Fee Schedule and such remuneration shall be chargeable to the Fund as an expense.

44. Remuneration payable to Trustee. - The Trustee shall be entitled to such fee or as may be agreed between the FMC and the Trustee, and such fee shall be chargeable to the Fund as an expense.

 **Power of the Commission to give directions.-** Without prejudice to the powers of the Commission under section 282(D) of the Ordinance or any other applicable law, the

Commission may, if it is satisfied that it is necessary and expedient to do so in the interest of Unit Holders or a Private Equity Undertaking or the capital market in Pakistan, by an order in writing, require such compliance by the FMC, the Trustee, the Private Equity Undertaking or any Person having any material dealings relating to the affairs of the Fund, individually or collectively, that is considered essential for the enforcement of these Regulations and the safe custody and ownership of the Fund and its assets and require the submission of periodic or special reports, disclosure of information and the making of such arrangements, within such time as may be Specified.

46. Power to require information, etc.- (1) Without prejudice to the powers of the Commission under Regulation 45, the Commission may, at any time, by a notice in writing, require Trustees or FMCs generally, or any Trustee or FMC in particular, or Private Equity Undertaking or any other Person or entity providing services, in relation to the Fund vested in or managed by them or it, to furnish to the Commission and such Persons as may be Specified within the time specified therein or such further time as the Commission may allow, any statement or information or document relating to the business or affairs of such Trustee, Trustees, FMC, FMCs, Fund or Funds (including any business or affairs with which such Trustee, Trustees, FMC, FMCs, Private Fund or Funds is or are concerned) and without prejudice to the generality of the foregoing power, may call for information, at such time or intervals as the Commission may deem necessary.

(2) No Trustee or FMC, in relation to the Fund vested in or managed by it, and no director, officer, employee, agent or auditor thereof shall in any document, report, return, accounts, information or explanation required to be furnished pursuant to these Regulations, or in any application made under these Regulations, make any statement or give any information which he knows or has reasonable cause to believe to be false or incorrect or omit any material fact therefrom.

47. Special audit.- (1) The Commission may monitor the general financial condition of the Funds, and may at any time order special audit and appoint an auditor to carry out detailed scrutiny of the affairs of any Fund, provided that the Commission may, during the course of the scrutiny, pass such interim orders and give directions as it may deem appropriate.

(2) On receipt of the special audit report, the Commission may direct the FMC concerned to do or to abstain from doing certain acts and issue directives for immediate compliance which shall be complied forthwith or take such other action as the Commission may deem fit.

48. Inspection of Fund by the Commission.- (1) The Commission may, at any time,

- (a) inspect the Fund and its Record at the expense of the Fund being inspected;
- (b) inspect the Record, systems, and procedures, of the FMC or the Trustee; and
- (c) inspect the Record of a Private Equity Undertaking of any Fund;

(2) The inspection shall be carried out by such Inspector(s) as the Commission may appoint.

(3) It shall be the duty of every director or officer of the concerned FMC, or the Trustee, or any other person who has had any dealing with the FMC relating to business or affairs in general of the Fund, to produce before the Inspector(s) all such Record in his custody or power and to furnish the Inspector(s) with such statements and information relating to the affairs of the FMC, the Trustee, and the Fund within such time as the Inspector(s) may require.

(4) The Inspector may examine on oath any director or officer of the FMC, or the Trustee, or any other person who has had any dealing with the FMC relating to the business or affairs in general of the Fund and may administer oath accordingly.

49. Transitional Provisions.- All venture capital investments in the form of company or fund, by whatever name described, and the management companies managing such funds as well as trustees thereof, if any, may continue to function for a period of six months after the effective date of these Regulations in terms of existing constitutive documents and the terms of the NBFC Rules applicable to venture capital investments. After the expiry of such period all entities undertaking the business of private equity or venture capital pursuant to the NBFC Rules shall be deemed to be licensed under these Regulations and they shall take all steps necessary to become compliant with these Regulations to the satisfaction of the Commission, subject to such exceptions as may be Specified.

50. Savings.- Save as otherwise specifically provided, nothing in these Regulations shall affect or be deemed to affect anything done, action taken, investigation or proceedings commenced, order, appointment, conveyance, mortgage deed, document or agreement made, fee directed, resolution passed, direction given, proceedings taken or instrument executed or issued, under or in pursuance of the NBFC Rules or any notifications issued thereunder and any such thing, action, investigation, proceedings, order, appointment, conveyance, mortgage deed, document, agreement, fee, resolution, direction, proceedings or instrument, if in force at the coming into force of these Regulations, shall continue to be in force, and have effect as

if it were respectively done, taken, commenced, made, directed, passed, given, executed or issued under these Regulations.

51. Removal of difficulties - If any difficulty arises in giving effect to any of the provisions of these Regulations, or directions, guidelines or codes framed under the Ordinance, or in a particular case, or class of cases, or it would be in the interest of Unit Holder, Private Equity Undertakings, the general public or the capital market to do so, the Commission may relax, modify or vary such requirements from time to time subject to such conditions as it may deem fit.