

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
NOTIFICATION

Islamabad,, 2006

S.R.O./2006. The following draft Private Equity and Venture Capital Fund Rules, 2006, proposed to be made by the Federal Government in exercise of the powers conferred by section 282B of the Companies Ordinance, 1984 (XLVII of 1984), are hereby published, as required by section 506 of the said Ordinance, 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 publication in the official Gazette.

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 Federal Government.

THE PRIVATE EQUITY AND VENTURE CAPITAL FUND RULES, 2006

CHAPTER – I

Preliminary

1. Short title and commencement. (1) These rules may be called the Private Equity and Venture Capital Fund Rules, 2006.

(2) They shall come into force at once.

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

- (a) “Administrator” means a person appointed by the Commission to manage the affairs of a Private Equity and Venture Capital Fund upon cancellation of the licence granted to the Fund Management Company by the Commission pursuant to sub-rule (7) of rule 10;
- (b) “associated companies” and “associated undertakings” have the same meanings as defined in section 2 of the Ordinance;
- (c) “certificate” means a certificate of registration granted by the Commission under rule 13;
- (d) “close relative” means spouse, minor children, lineal ascendants and descendants, brothers and sisters or their descendants;
- (e) “Commission” means the Securities and Exchange Commission of Pakistan established under the Securities and Exchange Commission of Pakistan Act, 1997(XLII of 1997);
- (f) “company” means a company incorporated under the Companies Ordinance, 1984 (XLVII of 1984);
- (g) “connected person”, in relation to a Fund Management Company or a Trustee, means:-
- (i) any person, whether natural or juridical, owning or being able to exercise control over, whether directly or indirectly through close

relatives, subsidiaries or other entities controlled by such person, ten *per cent* or more of the ordinary share capital of the Fund Management Company or the Trustee, as the case may be;

(ii) any person controlled by a person described in sub-clause (i);

(iii) associated companies or undertakings of the Fund Management Company or the Trustee and subsidiaries of such associated companies or undertakings along with all such juridical persons that are controlled by any of these entities or by the Fund Management Company or by the Trustee or in which they or the Fund Management Company or the Trustee hold a substantial ownership interest;

(iv) a unit holder holding, individually or along with close relatives or associated companies or undertakings, in excess of ten percent (10%) of the units of the Private Equity and Venture Capital Fund as well as all entities in which such unit holder has a substantial ownership interest;

(v) as regards a Trustee who is a natural person all natural persons who are close relatives.

(vi) senior executive officers, as may be prescribed or the directors of the Fund Management Company or the Trustee, as the case may

be, or of any of the connected persons specified in sub-clauses (i),
(ii), (iii) and (iv);

(h) “constitutive documents” in relation to a Private Equity and Venture Capital Fund Scheme means the trust deed and other relevant documents;

(i) “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 the units, of a Private Equity and Venture Capital Fund Scheme, offered to such person and that such person has resources available for making such investment;

Provided that an insurance company or an institution entrusted with responsibility to manage funds collected from the public at large or a pension or provident fund shall not be considered eligible investors;

(j) “equity” in the case of the Fund Management Company includes paid up capital, general reserves, balance in share premium account, reserve for issue of bonus shares and unappropriated 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

(k) “Foreign Private Equity and Venture Capital Entity” means a Foreign Private Equity and Venture Capital Entity as described in Rule 4.

- (l) “Form” means any of the forms annexed to these rules;
- (m) “Fund Management Company” means a company incorporated in terms of rule 5(2) or an asset management company or the investment advisor that is compliant in terms of clause (b) of rule 3 and licensed by the Commission in accordance with rule 6 to provide Fund Management Services;
- (n) “Fund Management Services” mean the management and administration and advisory services provided in respect of a Private Equity and Venture Capital Fund Scheme in accordance with these rules;
- (o) “holder” or “unit holder” means the person who is entered in the register as the holder of a unit of the Private Equity and Venture Capital Fund Scheme;
- (p) “investible funds” means capital of the Private Equity and Venture Capital Fund Scheme net of expenditure for administration and management of the Private Equity and Venture Capital Fund Scheme;
- (q) “negative list” means the list of activities, sectors or industries in which the funds comprising a Private Equity and Venture Capital Fund shall not be invested and includes the following:
- (i) arms and ammunitions;

- (ii) high explosives;
- (iii) radioactive substances;
- (iv) security printing, currency and mint;
- (v) manufacture of alcoholic beverages;
- (vi) environmentally hazardous projects;
- (vii) gold financing;
- (viii) dealing in real estate for purposes of speculation or capital gain without development thereof;
- (ix) any other activity, sector or industry that may, from time to time, be prescribed by the Commission.

(r) “Ordinance” means the Companies Ordinance, 1984 (XLVII of 1984);

(s) “placement memorandum” means a document, or documents issued together, containing information about a Private Equity and Venture Capital Fund scheme in order to invite eligible investors to buy units of a Private Equity and Venture Capital Fund;

(t) “prescribed” means prescribed, determined, specified or directed by the Commission under any rules, regulations or guidelines made hereunder, by whatever name described;

(u) “Private Equity and Venture Capital Fund” or “Fund” means a fund constituted in the form of a closed-end trust, vested in a Trustee in terms of a trust deed, and managed by a fund management company formed under

these rules and, that:-

- (i) has a dedicated pool of capital, raised in a manner specified in these rules; and
 - (ii) makes investments out of the available capital in accordance with these rules;
- (v) “Private Equity and Venture Capital Fund Scheme” means a scheme that provides for the management, vesting and investing of the funds of, as well as all other matters generally arising out of or in relation to, a Private Equity and Venture Capital Fund consistent with these rules.
- (w) “Private Equity Undertaking” means a company that is engaged in the business of production, manufacture of articles or things or providing services excluding such activities or sectors that are placed in the negative list prescribed by the Commission;
- (x) “register” means the register of unit-holders of a Private Equity and Venture Capital Fund Scheme kept and maintained in accordance with clause (h) of rule 16;
- (y) “record” includes all documentary and electronic materials created, generated, sent, communicated, received or stored regardless of physical form or characteristics;
- (z) “Schedule” means a schedule to these rules;

- (aa) “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;
- (bb) “subscription agreement” means the subscription agreement referred to in rule 24(1)(b);
- (cc) “substantial ownership interest” means ownership of ten per cent or more of the voting power in a company or other undertaking;
- (dd) “trust” means a trust established by a deed under the provisions of the Trusts Act, 1882 (II of 1882);
- (ee) “trust deed” means the deed of trust entered into between a Fund Management Company and a Trustee that governs the establishment and operation of a Private Equity and Venture Capital Fund Scheme;
- (ff) “Trustee” means a trustee, appointed in respect of a Private Equity and Venture Capital Fund in accordance with clause (c) of rule 12 and who is a party to the trust deed;
- (gg) “unit” means beneficial interest of an eligible investor in the Private Equity and Venture Capital Fund Scheme; and

(2) Words and expressions used but not defined in these rules shall have the same

meaning as assigned to them in the Companies Ordinance (XLVII of 1984), the Securities and Exchange Commission Act (XLII of 1997), the Securities and Exchange Ordinance, 1969 (XVII of 1969) and the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003.

CHAPTER – II

The Fund Management Company

3. Fund Management Company. – The following may be permitted to act as Fund Management Companies inside Pakistan:

- (a) A company that has been incorporated under the Ordinance, after the effective date of these rules, with the prior approval of the Commission, having as one of its main objects the establishment of Private Equity and Venture Capital Fund Scheme and the provision of Fund Management Services, provided that each of its promoters and proposed directors fulfils such “fit and proper person” criteria along with such other requirements as may be prescribed by the Commission from time to time;
- (b) A company that is, on the effective date of these rules, an existing Asset Management Company or Investment Adviser in terms of the Non-Bank Finance Companies (Establishment and Regulation) Rules, 2003 and undertakes to become compliant, within such period as may be specified by the Commission, with these rules and such other requirements as the Commission may, from time to time, prescribe.

4. Foreign Private Equity and Venture Capital Entity.— (1) An entity set up outside Pakistan or the territory of Azad Jammu and Kashmir for the purpose of

managing or investing Private Equity or venture capital funds, 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 rules, may make investments in Pakistan or the territory of Azad Jammu and Kashmir;

Provided that such entity has been registered with the Commission as a Foreign Private Equity and Venture Capital entity, after due compliance with such conditions as may be prescribed. Such Foreign Private Equity and Venture Capital Entities may hold, invest or manage in Pakistan only such funds as have been collected outside Pakistan or the territory of Azad Jammu and Kashmir and have been transferred to Pakistan or the territory of Azad Jammu and Kashmir 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.

(2) The Commission may issue an order to revoke the registration of a Foreign Private Equity and Venture Capital Entity if;

- (i) it deems that the continuation of business by such an entity in Pakistan is not in the interest of the public; or
- (ii) Such an entity has violated any law of Pakistan to which it becomes subject, and such violation can not be rectified;

Provided that no such order shall be made except after giving the Foreign Private Equity and Venture Capital entity an opportunity of being heard.

5. Permission to form a Fund Management Company. - (1) Persons desirous of forming a Fund Management Company shall make an application to the Commission as set out in Form-I providing information, specified in the annex thereto, along with all the relevant documents and receipt evidencing the payment of a non-refundable

processing fee as may be prescribed by the Commission from time to time in Schedule I.

(2) The Commission may, if it is satisfied that the persons seeking permission to form the Fund Management Company fulfill the conditions specified in rule 3, permit such persons, by an order in writing, to establish a Fund Management Company.

(3) The permission granted under sub-rule (2) shall be valid for a period of six months unless extended for a maximum period of three months under special circumstances on the application of the promoters made before the expiry of said six months.

6. Grant of licence. - (1) A company incorporated as a Fund Management Company or an asset management company or an investment advisor that is compliant in terms of clause (b) of rule 3 shall make an application to the Commission for grant of licence for carrying on the business of providing Fund Management Services. The said application shall be submitted to the Commission in Form-II along with a non-refundable processing fee, as may be prescribed by the Commission from time to time in Schedule I.

(2) The Commission may grant a licence in Form-III for the provision of Fund Management Services if it is satisfied that the Fund Management Company has fulfilled the following conditions in addition to the conditions specified in rule 3:-

(a) it has at least two members;

(b) it has a minimum paid up capital of ten million rupees or higher as may be prescribed by the Commission from time to time;

(c) it has adequate financial, technical, organizational and human resources and appropriate systems, procedures and processes in place to provide Fund Management Services in a proper and efficient manner; and

(d) its promoters, directors, or key officers have not held any office in an NBFC against which a punitive action was taken during the past five years.

(3) Without prejudice to the conditions prescribed under sub-rule (2), the Commission may, while granting a licence, impose such other conditions, as it may deem necessary.

7. Commencement of operations by a Fund Management Company. - (1) A Fund Management Company shall commence its business and operations only after it has been issued a licence in terms of rule 6 and all conditions contained in rule 5 have been complied with. In case a Fund Management Company fails to commence its business within six months from the date of issuance of the licence aforesaid, the licence issued to it shall be deemed cancelled unless the six-month period is extended by the Commission for a further period of six months on receipt of an application made by the company no later than one month prior to the expiration of such period.

(2) Without prejudice to the terms and conditions prescribed in rule 8, the Commission may, subsequent to the grant of licence to the Fund Management Company, impose any other condition, as it may deem necessary.

8. Conditions applicable to a Fund Management Company. - (1) A Fund

Management Company shall:-

- (a) maintain adequate financial, technical, organizational and human resources, and employ appropriate systems, procedures, processes and personnel to provide Fund Management Services in a proper and efficient manner on an ongoing basis;
- (b) appoint or change its chief executive or any of its directors, excluding director(s) nominated by the Federal Government or any of the Provincial Governments, subject to prior approval of the Commission;
- (c) maintain satisfactory internal controls and written compliance procedures that address all applicable regulatory requirements;
- (d) maintain such books of accounts and other records as shall depict a true and fair picture of its state of affairs;
- (e) prepare its accounts in conformity with the International Accounting Standards notified under sub-section (3) of section 234 of the Ordinance and technical releases issued by the Institute of Chartered Accountants of Pakistan from time to time; and
- (f) within four months of close of its financial year, submit to the Commission its annual report, together with a copy of its balance sheet, income and expenditure account, cash flow statement, statement of changes in equity and the auditor's report.

(2) A Fund Management Company shall not:-

- (a) issue fresh capital, allow transfer of ownership of sponsor shares held in it, merge with, acquire or take-over any other company unless it has obtained prior approval of the Commission in writing to such transfer, merger, acquisition or takeover; and
- (b) remove any of its records or documents relating to its business from Pakistan to a place outside Pakistan without the prior permission of the Commission.

9. Obligations of a Fund Management Company. - A Fund Management Company licensed by the Commission shall:-

- (a) manage the Private Equity and Venture Capital Fund in accordance with the constitutive documents and all applicable laws in the sole and exclusive interest of the unit holders, in good faith and to the best of its ability without gaining any undue advantage for itself or any of its associated or connected persons;
- (b) undertake all transactions and acquire all property or assets in furtherance of the objects of the Private Equity and Venture Capital Fund, as the case may be, in the name of the Trustee;
- (c) account to the Trustee for any loss in value of the investments made by the Private Equity and Venture Capital Fund where such loss has been caused by the negligence recklessness or willful act or omission by the Fund Management Company;

- (d) be responsible for the acts or omissions of all persons, howsoever, designated, to whom it may delegate any of its functions as Fund Management Company as if such acts or omissions were its own;
- (e) maintain for a period of ten years at its principal place of business in Pakistan proper books of accounts and record of the activities undertaken in connection with the Private Equity and Venture Capital Fund in order to enable a complete and accurate view to be formed of assets and liabilities as well as the income and expenditure arising out of the Private Equity and Venture Capital Fund, and of all transactions undertaken with respect to the Private Equity and Venture Capital Fund and of the amounts received by the Fund Management Company in respect of issue of units of the Private Equity and Venture Capital Fund and of distributions, if any, to the unit holders;
- (f) within four months of the close of the financial year, prepare and transmit to the unit holders and the Commission the annual report, together with a copy of the audited balance sheet, income and expenditure account, cash flow statement, statement of changes in equity and the auditor's report of the Private Equity and Venture Capital Fund. Such balance sheet, income and expenditure account, cash flow statement, statement of changes in equity and the auditor's report shall comply with any requirements that the Commission may from time to time prescribe in Schedule-II;
- (g) provide to all unit holders, within thirty days of close of a quarter, unaudited

quarterly financial and activity reports in a form as may be prescribed by the Commission;

- (h) appoint in respect of the Private Equity and Venture Capital Fund upon its establishment, and upon occurrence of any vacancy, with the consent of the Trustee, an auditor who shall be a chartered accountant, or a cost and management accountant or a person having master's degree in commerce or business administration with specialization in Finance, and possesses an experience of at least three years;

Provided that the auditor so appointed is not the auditor of the Fund Management Company or the Trustee; and

- (i) provide secretarial services, through the office of the company secretary of the Fund Management Company, to the 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 the unit holders, including the tabling and passage 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 rules.

10. Cancellation of licence, etc. – (1) Where the Commission is of the opinion that a Fund Management Company has contravened any provision of the Ordinance, these rules, or any prescription made under these rules, or is in breach of any material provision of the constitutive documents, or has otherwise neglected or failed to

comply with any order or direction of the Commission or has failed or neglected to carry out its duties to the satisfaction of the Trustee, and the Commission considers that it would be in the interest of the unit holders so to do, the Commission may on its own motion or on the report of the Trustee or on application by unit holders holding not less than ten *per cent* of the units issued by the Private Equity and Venture Capital Fund, by an order in writing:-

- (a) cancel or suspend the licence of the Fund Management Company granted under these rules;
- (b) remove the Fund Management Company from the office of a Private Equity and Venture Capital Fund scheme;
- (c) issue, cease and desist orders to the Fund Management Company;
- (d) order compensation to be paid to the unit holders;
- (e) impose fine; or
- (f) take any combination of the actions described above.

Provided that no such orders shall be made under sub-rule (1) except after offering the Fund Management Company an opportunity of being heard.

(2) A Fund Management Company removed from office under sub-rule (1), shall not be entitled to or be paid any compensation or damages for loss or termination of office.

(3) If the licence of the Fund Management Company is cancelled under sub-rule (1):-

- (a) the Commission shall appoint another licensed Fund Management Company as a replacement thereof;

(b) the Fund Management Company whose licence has been cancelled shall not be eligible for the grant of a licence to conduct business as a Fund Management Company again; and

(c) no director or officer of the Fund Management Company whose licence has been cancelled shall hold the office of director of a Fund Management Company or any other office connected with the conduct or management of the affairs of a Private Equity and Venture Capital Fund Scheme until after the expiration of a period of five years from the date of such cancellation.

(4) Upon cancellation of licence under sub-rule (1), the functions and carrying on of the business of the Fund Management Company shall cease and the Commission may apply to move the Court for a winding up order in respect of the Fund Management Company or take such other action against the Fund Management Company as the Commission may deem fit.

(5) Notwithstanding the cancellation of licence under sub-rule (1), the directors, chief executive, chairman and other officers of the Fund Management Company shall not be absolved of any civil and criminal liability under these rules, the Ordinance, or any other law for the time being in force.

(6) Where the licence of a Fund Management Company has been cancelled under sub-rule (1), the Commission may, by an order in writing, appoint a person as Administrator to manage the affairs of such Fund Management Company subject to such terms and conditions as may be specified in the order.

(7) The management of the affairs of the Fund Management Company, shall vest in the Administrator on and from the date of the Administrator's appointment until a

liquidator is appointed by the Court.

(8) A Fund Management Company may apply to the Commission for the cancellation of its licence as a Fund Management Company if it has, with the prior approval of the unit holders through a special resolution, and with the sanction of the Commission, transferred management of the Private Equity and Venture Capital Fund being managed by it to another Fund Management Company.

CHAPTER – III

Registration of a Private Equity and Venture Capital Fund Scheme

11. Registration of a Private Equity and Venture Capital Fund Scheme. - (1) The Fund Management Company shall make an application to the Commission for registration of the trust deed setting up the Private Equity and Venture Capital Fund Scheme to operate a Private Equity and Venture Capital Fund or offer the units of such scheme to the investors and no Fund Management Company shall operate a Private Equity and Venture Capital Fund without grant of such registration.

(2) An application for grant of registration under sub-rule (1) shall be made to the Commission in Form-IV and shall be accompanied by a non-refundable application fee as may be prescribed by the Commission from time to time in Schedule I.

12. Eligibility criteria. For the purpose of grant of registration by the Commission the Private Equity and Venture Capital Fund Scheme shall have to fulfill such conditions as may be prescribed from time to time, including in particular the following:-

(a) the instrument of trust is in the form of a deed as specified by the Commission

form time to time in Schedule-III and has been duly registered under the provisions of the Registration Act, 1908;

(b) the sole object of the trust is to carry on activities in furtherance of a Private Equity and Venture Capital Fund Scheme through a prudent strategy of investment in accordance with these rules;

(c) the instrument of trust provides for a Trustee to be appointed by the fund management company, holding legal title to the Private Equity and Venture Capital Fund for the benefit of the unit holders, from among the following:

(i) 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

(ii) a trust company which is a subsidiary of a scheduled bank; or

(iii) a foreign bank operating as a scheduled bank in Pakistan and operating as trustee internationally; or

(iv) an NBFC, that is not a connected person of the Fund Management Company nor is itself acting as a Fund Management Company, 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

(v) such other person or persons as the Commission may specify, fulfilling such fit and proper person criteria as may be prescribed by the Commission from time to time;

(d) the instrument of trust vests the Trustee with power to take all steps necessary for the liquidation of all or any investment made out of the Private Equity and

Venture Capital Fund, to wind up the Private Equity and Venture Capital Fund Scheme and to also direct the Fund Management Company to take such steps as may be directed by the Trustee.

13. Procedure for grant of registration. - (1) If the Commission is satisfied that the Private Equity and Venture Capital Fund Scheme is eligible for the grant of registration it shall send intimation to the Fund Management Company.

(2) On receipt of intimation, the Fund Management Company shall pay to the Commission such registration fee as may be prescribed, from time to time, in schedule I.

(3) The Commission shall on receipt of the registration fee grant a certificate of registration in Form-V, which shall remain valid subject to continuous compliance by the Fund Management Company, the Trustee and the Private Equity and Venture Capital Fund Scheme with all applicable laws, including all prescriptions made hereunder.

14. Conditions of registration. - The registration of a Private Equity and Venture Capital Fund Scheme under rule 13 shall, *inter alia*, be subject to the following terms and conditions:-

- (a) the Private Equity and Venture Capital Fund Scheme, including all investments out of the Private Equity and Venture Capital Fund, shall abide by the provisions of the Securities and Exchange Ordinance, 1969, the Securities and Exchange Commission Act, 1997, the Companies Ordinance, 1984 and these rules;

- (b) the Private Equity and Venture Capital Fund Scheme shall not carry on any activity other than that of a Private Equity and Venture Capital Fund consistent with these rules;
- (c) no investment shall be made out of the funds of the Private Equity and Venture Capital Fund unless a sum of at least twenty five million rupees has been raised and firm commitments obtained for the investment by eligible investors of at least a sum of fifty million rupees or such other higher sums as the Commission may from time to time prescribe; and
- (d) the Fund Management Company shall 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.

15. Procedure where registration is not granted. - (1) If after considering an application made under rule 11 the Commission is of the opinion that registration should not be granted, it may reject the application after giving the Fund Management Company a reasonable opportunity of being heard.

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

CHAPTER – IV

Obligations and Retirement or Removal of the Trustee

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

(a) exercise all due diligence and vigilance in carrying out its functions and duties under the trust deed, the other constitutive documents, these rules and all other applicable laws in order to supervise furtherance of the objects of the Private Equity and Venture Capital Fund Scheme and to protect the rights and interests of the unit holders;

(b) ensure that the investments made out of the Private Equity and Venture Capital Fund are properly identified and held for the benefit of the unit holders in accordance with the provisions of the constitutive documents, these rules and all other applicable laws;

(c) ensure that the funds held in or the investments made out of the Private Equity and Venture Capital Fund are lawfully vested in the Trustee and hold such funds and investments in trust for the holders in accordance with the law and the provisions of the constitutive documents;

(d) ensure that the issue and transfer of the units of the Private Equity and Venture Capital Fund are carried out in accordance with the provisions of the constitutive documents and any rules or directions issued by the Commission;

(e) carry out the instructions of the Fund Management Company in respect of investments unless they are in conflict with the provisions of the constitutive documents, these rules or any other applicable law;

(f) ensure that the investment limits set out in these rules, the constitutive documents and the conditions of registration of the Private Equity and Venture Capital Fund Scheme are complied with;

(g) take all reasonable care to ensure that all transactions carried out by the Fund Management Company in connection with the Private Equity and Venture Capital Fund are conducted at arm's length;

(h) maintain the register of unit holders and inform the Commission of the address where the register is kept;

(i) issue a report to be included in the annual report to be sent to the unit holders and the Commission, stating whether in its opinion the Fund Management Company has in all material respects managed the Private Equity and Venture Capital Fund in accordance with the provisions of the constitutive documents, these rules and all applicable laws, or if the Fund Management Company has not done so, specify the deviations and the steps that the Trustee has taken in respect thereof; and

(j) take all reasonable care to ensure that units are not issued until subscription monies have been paid.

17. Retirement or removal of Trustee. - (1) The Trustee may retire from its office on the appointment of a new Trustee approved by the Commission and the retirement shall take effect from the date of vesting of the Private Equity and Venture Capital Fund in the newly appointed Trustee.

(2) The Trustee may be removed by notice in writing from the Commission in any of the following events:-

(a) the Trustee goes into liquidation, becomes bankrupt or has a receiver or administrator appointed over his assets; or

(b) a resolution is passed by the unit holders holding at least three-fourths in value of the issued units of the Fund resolving that the Trustee is liable to be removed in a general meeting specifically called for this purpose by the Commission upon petition of holders of not less than ten *per cent* in value of

the outstanding units, with the Trustee and its connected or associated persons abstaining from voting on such resolution.

CHAPTER – V

Investment Conditions and Restrictions

18. Minimum investment in a Private Equity and Venture Capital Fund. - A Fund Management Company may raise funds for a Private Equity and Venture Capital 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) A Fund Management Company shall neither make nor accept an offer for subscription to the units of a Private Equity and Venture Capital Fund of an amount less than five million rupees.

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

- (b) Every investor approached for raising funds for a Private Equity and Venture Capital Fund shall be provided, along with the placement memorandum, a declaration to be submitted to the Fund Management Company after execution by such investor stating, inter alia, that the investor has carefully examined the placement memorandum and that the investor possesses the capacity to undertake the risks as mentioned in the offering document.

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

- (a) the Fund Management Company shall disclose the detailed investment strategy at the time of application for registration and in the placement memorandum and offering document;
- (b) the investible funds may be invested in a connected person of either the Fund Management Company 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-rule (1) is breached, the Fund Management Company 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) complete such rectification and restore compliance with the relevant condition(s) within such period as the Commission may specify after being informed of the breach.

20. Prohibition on listing. – The units of a Private Equity and Venture Capital Fund shall not be listed on any stock exchange.

21. Life of the Private Equity and Venture Capital Fund. - A Private Equity and Venture Capital Fund may be established for a specified time period as provided for in the placement memorandum and the subscription agreement. Upon expiration of such specified time period, the Private Equity and Venture Capital Fund shall be liquidated through realization of all investments made and after disbursement among the unit-holders the trust shall stand extinguished;

Provided that in certain cases where investment(s) made out of a Private Equity and Venture Capital Fund require more time to mature, the Commission may allow such extension as is considered appropriate, provided that the extension granted must be less than the number of years originally specified as the definite life of the Private Equity and Venture Capital Fund.

Chapter VI

General Obligations and Responsibilities

22. 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 the units of a Private Equity and Venture Capital Fund.

23. Private placement. - Subscription to the Private Equity and Venture Capital Fund shall be received only through private placement of the units of the Fund.

24. Placement memorandum and subscription agreement.— (1) The Fund Management Company shall for the purpose of all private placements of the units of the Private Equity and Venture Capital 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

(b) enter into a subscription agreement with each eligible investor that shall specify the rights and obligations of the Fund Management Company, including the obligation to act in accordance with the placement memorandum, the rights and obligations of the investors as regards the Private Equity and Venture Capital Fund Scheme and towards each other;

(2) The Fund Management Company 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 the investors.

25. Contents of the placement memorandum. - The placement memorandum shall contain such information as the Commission may specify from time to time in Schedule-IV.

26. Winding up. - (1) A Private Equity and Venture Capital Fund Scheme and the Private Equity and Venture Capital Fund shall be wound up:-

(a) after the maturity period of the Private Equity and Venture Capital Fund, if any, as specified in the placement memorandum, the subscription agreement or the trust deed;

(b) if the unit holders holding units representing at least three-fourths of the funds invested in the Private Equity and Venture Capital Fund have, subject to the conditions of the placement memorandum or the subscription agreement and the trust deed, passed a resolution that the Private Equity and Venture Capital Fund Scheme shall be wound up; or

(c) if the Commission so directs the Trustee, after carrying out such investigation as may be necessary, in the interests of the unit holders.

(2) The Trustee shall intimate the Commission and unit holders of the circumstances leading to the winding up of the Private Equity and Venture Capital Fund Scheme and the Private Equity and Venture Capital Fund under sub-rule (1).

27. Effect of winding up. - (1) On and from the date of intimation under sub-rule (2) of rule 26, no further investments shall be made out of the Private Equity and Venture Capital Fund.

(2) Within three months from the date of intimation under sub-rule (2) of rule 26, the assets of the Private Equity and Venture Capital Fund Scheme 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-rule (2) and subject to the conditions, if any, contained in the placement memorandum or subscription agreement, as the case may be, in-specie distribution of assets of the Private Equity and Venture Capital

Fund, shall be made by the Fund Management Company at any time, including on winding up of the Private Equity and Venture Capital Fund Scheme, in accordance with the preference of the unit holders, after the unit holders have expressed such preference through a resolution supported by unit holders holding at least three-fourths in value of the issued units of the Private Equity and Venture Capital Fund Scheme.

Chapter VII

Miscellaneous

28. Remuneration payable to the Fund Management Company. - The Fund Management Company shall be entitled to be paid such remuneration as may be specified in the subscription agreement between the Fund Management Company and the unit holders and such remuneration shall be chargeable to the fund as an expense.

29. Supervisory 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 schedule I and such remuneration shall be chargeable to the fund as an expense.

30. Annual fee payable to the Commission. - An annual fee, as may be prescribed by the Commission in Schedule I, shall be payable to the Commission in respect of each Private Equity and Venture Capital Fund Scheme within four months of the close of each financial year and such fee shall be charged as an expense to the Private Equity and Venture Capital Fund Scheme.

31. Remuneration payable to Trustee. - The Trustee shall be entitled to such fee or remuneration as may be agreed between the Fund Management Company and the Trustee, and such fee shall be charged as an expense to the Private Equity and Venture Capital Fund Scheme.

32. Power of the Commission to issue regulations and guidelines. - The Commission shall have the power to issue such regulations or general guidelines as may be necessary or appropriate or advance rulings in response to specific queries made by a Fund Management Company or persons intending to be promoters of a Fund Management Company with respect to any matter pertaining to an existing or intended Private Equity and Venture Capital Fund scheme.

33. Power of the Commission to give directions. - The Commission may, if it is satisfied that it is necessary and expedient so to do in the interest of the unit holders or the market for Private Equity and Venture Capital Funds in Pakistan, by order in writing, require such compliance by the Fund Management Company, the Trustee, or any person having any material dealings relating to the affairs of a Private Equity and Venture Capital Fund Scheme, individually or collectively, that is considered essential for the enforcement of these rules and the safe custody and ownership of assets held by a Private Equity and Venture Capital Fund Scheme 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.

34. Power to require information, etc. - (1) Without prejudice to rule 33, the Commission may, at any time, by notice in writing, require Trustees or Fund Management Companies generally, or any Trustee or Fund Management Company in

particular, in relation to the Private Equity and Venture Capital Fund Scheme(s) vested in or managed by them or it, to furnish to the Commission and such persons as may be specified by the Commission 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, Fund Management Company, Fund Management Companies, Private Equity and Venture Capital Fund or Private Equity and Venture Capital Funds (including any business or affairs with which such Trustee, Trustees, Fund Management Company, Fund Management Companies, Private Equity and Venture Capital Fund or Private Equity and Venture Capital Funds is or are concerned) and, without prejudice to the generality of the foregoing power, may call for information, at such intervals as the Commission may deem necessary.

(2) No Trustee or Fund Management Company, in relation to the Private Equity and Venture Capital 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 rules, or in any application made under these rules, 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.

35. Special audit. - (1) The Commission shall monitor the general financial condition of Private Equity and Venture Capital Funds, and may at any time order special audit and appoint an auditor, who shall not be the external auditor of any Private Equity and Venture Capital Fund Scheme, to carry out detailed scrutiny of the affairs of such

Private Equity and Venture Capital Fund Scheme, 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 Fund Management Company 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.

36. Inspection of a Private Equity and Venture Capital Fund by the Commission.

- (1) The Commission may, at any time, inspect the books of account of any Private Equity and Venture Capital Fund Scheme and the fund itself.

(2) The inspection shall be carried out by such officer(s) of the Commission or such independent auditor as the Commission may so appoint.

(3) It shall be the duty of every director or officer of the concerned Fund Management Company, and of the Trustee, and of any other person who has had any dealing with the Fund Management Company relating to business or affairs in general of the Private Equity and Venture Capital Fund Scheme, to produce before any officer or auditor appointed under sub-rule (2), (hereinafter referred to as the “inspector”), all such books, accounts and other documents in his custody or power and to furnish the inspecting officer with such statements and information relating to the affairs of the Fund Management Company, the Trustee, and the Private Equity and Venture Capital Fund Scheme within such time as the inspecting officer may require.

(4) The inspector may examine on oath any director or officer of the Fund Management Company, or the Trustee, or any other person who has had any dealing with the Fund Management Company relating to the business or affairs in general of the Private Equity and Venture Capital Fund Scheme and may administer oath accordingly.

37. Transitional Provisions. All venture capital investments in the form of company or fund or Private Equity and Venture Capital Funds, by whatever name described, and the management companies managing such funds as well as trustees thereof, if any, after the effective date of these rules, may continue to function for a period of six months, in terms of existing constitutive documents and the terms of the Non-Bank Finance Company Rules, 2003 applicable to venture capital investment. During this period of six months all steps necessary to become compliant with these rules shall be taken and after the expiry of this six month period all entities undertaking the business of Private Equity or venture capital, by whatever name described and existing on the effective date of these rules shall act in complete compliance with these rules.

38. Repeal and savings - (1) All provisions of the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003 that relate to Venture Capital Investment, including Rule 2(1)(xlvii), 2(1)(xlviii), 2(1)(xlv), 2(1)(l), 5(2)(b)(iii) and Rule 22 to 32 are hereby repealed and the words “or venture capital fund” are hereby deleted from Rule 2(1)(i) of the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003.

(2) Save as otherwise specifically provided, nothing in these rules, or any repeal effected thereby, 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 any rules or notifications repealed by these rules and any such thing, action, investigation, proceedings, order, appointment, conveyance, mortgage deed, document, agreement, fee, resolution, direction, proceedings or instrument shall if in force at the coming into force of these rules and not inconsistent with any of the provisions of these rules, 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 rules.

(3) The mention of particular matters in this rule or in any other rule of these rules shall not prejudice the general application of section 6 of the General Clauses Act, 1897 (X of 1897), with regard to the effect of the repeal.