

**THE VENTURE CAPITAL COMPANIES AND FUND MANAGERS
RULES, 1995.**

S.R. 0 107 (1),/95.--- In exercise of the powers conferred by section 12 and sub-sections (4) and (4A) of section 3 of the Capital Issues (Continuance of Control) Act, 1947 (XXIX of 1947), the Federal Government is make rules to provide that all consents and recognitions in respect of venture capital companies, for issue of capital, for making a public offer or taking any other action under sub-section (2) or sub-section (3) of the said section shall be subject to the following rules, namely:-

**CHAPTER I
PRELIMINARY**

1. Short title and commencement.--- (1) These rules may be called the Venture Capital Companies and Fund Mangers Rules, 1995.

(2) They shall come into force at once.

2. Definition.--4n these rules, unless there is anything repugnant in the subject or context.---

(a) "Authority" means a banking company as defined in the Banking Companies Ordinance, 1962 (LVII of 1962), which is appointed to act as custodian under these rules:

(c). "Controller" means Controller of Capital Issues;

(d) "Form" means a form set out in the Schedule to these rules:

(e). "free reserves" include any amount which, having been set aside out of the revenue or other surpluses. is free from all encumbrances and is not retained to meet any diminution in value of the assets, specific liability. contingency or commitment of that company known to exist at the date of the balance sheet:

(f). "Fund Manager" means an company incorporated in Pakistan, appointed to manage the funds and investments of the venture capital company:

(g). "net assets" means the excess of assets over liabilities of the company. such excess being computed in the manner specified hereunder:-

(i). investments in securities listed on stock exchange shall be valued for each individual security at its last sale price on such exchange on the date as of which it is valued, or if such exchange is not open on such date, then at its last sale price on the next preceding date on which such exchange was open and if no sale is reported for such date, the security. shall be valued at an amount not higher than the closing asked price nor lower than the closing bid price.

(ii). an investment purchased and awaiting payment against delivery shall be included for valuation purposes as a security. held, and the cash account of the company shall be adjusted to reflect the purchase price, including brokers' commissions and other expenses incurred in the purchase thereof but not disbursed as of the valuation date:

(iii). an investment sold but not delivered pending receipt of proceeds shall be valued at the net sale price;

(iv). direct investments in portfolio companies shall be valued to reflect the venture capital company's share of net assets of the investee companies as shown in their latest audited financial statements'

(v). the value of any dividends, bonus, shares or rights which may have been declared on securities in the portfolio but not received by the company as of the close of business on the valuation date shall be included as assets of the company, if the security. upon which such dividends bonuses or rights were declared is included in the assets and is valued ex-dividend, ex-bonus or ex-rights as the case may be;

(vi). interest accrued on any interest-bearing security. in the portfolio shall be included as an asset of the company if such accrued interest is not otherwise included in the valuation of the security;

(vii). any other income accrued up to the date on which computation was made shall also be included in the assets: and

(viii) all liabilities. expenses. taxes and other charges due or accrued up to the date of computation which are chargeable under these rules, other than the paid-up capital and reserves of the company, shall be deducted from the value of the assets.

(b). "net capital", in relation to a member of stock exchange, means an amount by which the current assets, namely, cash in hand or in bank. money receivable within a period of twelve months from the date of the balance sheet and such other assets, not being value of the membership card of the stock exchange, as are so classified under generally accepted accounting principles, exceed the current liabilities, namely, money payable within a period of twelve months from the date of the balance sheet and such other liabilities as are so classified under generally accepted accounting principles:

(i) "Ordinance" means the Companies Ordinance, 1984 (XLVII of 1984); and

(j) "venture capital company" means a company which is engaged principally in financing through direct equity investment in another company and by providing managerial expertise thereto.

CHAPTER II REGULATION OF THE BUSINESS OF VENTURE, CAPITAL COMPANIES

3. Permission to form a venture capital company.---(i) Any person desirous of forming a venture capital company shall make an application to the Controller in Form I.

(2) The Controller may if he is satisfied that the proposed company has complied with the conditions specified in Form I, by order in writing permit the establishment of venture capital company.

4. Compulsory registration.---no company shall commence business as a venture capital company unless it is registered with the Controller under these rule.

5. Eligibility for registration.---A company proposing to commence business as a venture capital company shall be eligible for registration under these rules if it fulfils or complies with the following conditions or-requirements, namely:-

(a). that it is registered as a public limited company under the Ordinance.

(b). that it has a paid up capital of not less than one hundred million rupees;

(c). that the composition of its board include one director and a chairman who have knowledge and senior level experience of financial management;

(d). that no director, officer or employee of venture capital company has been convicted of fraud or breach of trust or has been convicted by a court of law for an offence involving moral turpitude;

(e). that it does not have more than fifty per cent of its sponsors and proposed directors from the same family:

(f). that no director, officer or employee of such company has been adjudicated as insolvent or has suspended payment or has compounded with his creditors or has been found guilty, of any offence under the Ordinance;

(g) that the promoters and directors of such company are, in the opinion of the Authority, persons of means and integrity and have special knowledge of matters which the company may have to deal with as a venture capital company;

(h). it has appointed an incorporated company as a Fund Manager which has acquired the requisite skills and experience for the management of its funds and investment;

(i). that it has a Chartered Accountant, Management Accountant or person having Master's Degree in Commerce or Business Administration with five years relevant experience as its Chief Accounting Officer, and

(j). that its Chief Executive shall not directly or indirectly engage in any business which is of the same nature as and directly competes with the business carried on by the company of which he is the Chief Executive or by a subsidiary of such company.

6. Registration.---(1) A venture capital company, eligible for registration under rule 5, may make an application in Form II to the Controller for registration under these rules.

(2) An application for such registration under sub-rule (1) shall, besides the other documents referred to in the form, shall be accompanied by an undertaking from the sponsors, that they will at all times hold or beneficially own equity, in the venture capital company the extent of ten percent of the paid up capital of the company or fifty million rupees, whichever is lower. The Controller may reduce this requirement in special circumstances.

(3) The controller, if he is satisfied after such enquiry and after obtaining such further information as he may consider necessary,---

(i) that the applicant is eligible for registration; and

(ii). that it would be in the interest of the capital market so to do, may grant certificate of registration to such a company in Form III.

7. Terms and conditions of operation.--- A venture capital company shall,--

(a). not expose the venture capital to a single group for more than twenty per cent of its paid up capital and free reserve;

(b). disclose all investments exceeding ten per cent of its paid up capital in its accounts; and

(c). ensure that the maximum exposure of the venture capital company to its directors, affiliated companies and companies in which any of the directors or his family members hold controlling interest shall not exceed ten per cent of the overall portfolio of venture capital.

8. Restriction.--- No venture capital company shall--

(a) merge with, acquire or take over any other venture capital company, unless it has obtained the prior approval of the Controller in writing to the scheme of such merger, acquisition or take-over.

(b). pledge any of the securities held or beneficially owned by it except for the benefit of the company;

(c). make a loan or advance money to any person except in connection with the normal business of the company;

(d). employ as a broker directly or indirectly, an) director, officer or employee of a venture capital company or its fund manager or any director, officer or employee thereof;

(e) acquire any security, of which another venture capital company is the issuer;

(f). make investment in enterprises engaged in trading, brokerage, investment or financial services; and

(g). undertake the business of real estate or provide funds to the construction companies, builders and developers and a company dealing in real estate.

9. Investment policy and diversification.--- (1) Investment policy with respect to the venture capital company shall be clearly and concisely stated in the Memorandum and Articles of Association and the public offer for the sale of its shares.

(2) The original amount of the capital raised by the venture capital company shall be invested as equity' in such manner that at least 15% of such investments are made by the end of first year. 30% by end of second year. 45% by end of third year. 60% by end of fourth year and 70% by end of fifth year of operation.

(3) Venture Capital Company shall also extend equity. support to those enterprises which are at start-up, expansion or growth stage and where technology. is comparatively new it will extend support to promoters and entrepreneurs who are relatively qualified with inadequate resources to finance the project.

(4) The venture capital company shall directly invest not less than seven per cent of its assets in entities in the form of equity after the expiry of five years of operations. The balance funds shall be invested in the following manner,. namely:-

(i). Money market operation including Government securities: and

(ii). Financing in approved financial institutions.

(5) The size of the individual investment in any one venture shall not exceed ten percent of the net assets or twenty percent of the paid-up capital and reserves of the venture capital company, whichever is lower.

(6) Investment in securities quoted on the stock exchange shall not exceed ten percent of its total net asset value of the venture capital company. This restriction shall exclude unlisted companies which are subsequently listed, in which the venture capital company has an equity. interest prior to listing

(7) No venture capital company shall allocate more than thirty. per cent of its net assets in any one sector.

10. Transactions with connected persons.--- All transactions with connected persons carried out by or on behalf of the company shall be made with the written consent of the Board and shall be disclosed in the company's annual report.

Explanation.---For the purpose of this rule, the expression "connected persons" means,--

(i). any person or company beneficially owning, directly or indirectly, ten percent or more of the ordinance share capital of company or able to exercise, directly or indirectly, ten per cent or more of the total votes in that company;

(ii). any person Or company controlled by a person who or which meets one or both of the descriptions given in sub-clause (i);

(iii). any member of the group of which that company forms part; or

(iv). any director or officer of a company.

11. Appointment of Fund Manager.---(1) No venture capital company shall appoint any person as a fund manager except by a contract in writing.

(2) The contract shall. initially or on renewal, be valid for a period of ten years and shall not be renewed or modified unless such renewal or modification has been authorised by the share holders of the venture capital company in a general meeting and approved by the Controller.

(3) The Board of the venture capital company shall review the performance of the company and issue necessary. instructions and policy guidelines to the Fund Manager in light of the investment policy of the company.

(4) The contract shall authorise the Fund Manager to have the sole responsibility, and full discretionary, authority, to invest and divest the assets entrusted to it by the venture capital company.

(5) The contract shall among other things, provide that the Fund Manager shall bear all expenditure in respect of its secretariat and office space, professional management, including the fee payable to him and for all administrative and accounting services.

(6) The fee payable to the auditors and the custodian, taxes on income of the company stamp duty and legal and professional services and any other duties or taxes connected with the sale or purchase of securities shall be payable by the venture capital company.

(7) The Fund Manager shall be empowered to negotiate advisory agreements with professional institutions to enable it to draw upon the necessarily diverse skills required.

12 Remuneration Payable to Fund Manager.--- (1) The Fund Manager of a venture capital company shall be entitled to be paid annually, after the accounts of the venture capital company have been audited, a remuneration of---

(i). an amount not exceeding 3% of the net assets of the venture capital company as at the end of its year of account;

(ii). an amount not exceeding twenty per cent of the capital gains forming part of the dividends distribute by the venture capital company to its shareholders; and

(iii). an amount of twenty percent of the unrealised capital gains of the venture capital company upon expiry or renewal of the contract.

(2) The remuneration due to the Fund Manager may be made in instalments including advance payments but any payments made in advance for the current year shall not exceed fifty percent of the amount of previous year's remuneration except in the case of the first year where the fee, as specified in clause (i) of sub-rule (1) shall be calculated on the share capital raised.

13. Custody of securities.---Every venture capital company shall place and maintain the asset owned (other than cash) or held by the company with a custodian appointed by it with the prior approval in writing of the Controller.

(2) The venture capital company shall settle with the custodian a scheme for the custody of securities which shall, among other matters, provide for the circumstances in which the securities may be released from custody.

(3) The custodian shall, if it feels that the nature of any release of a security from custody is contrary to the provisions of these rules, report the matter to the Controller forthwith.

14. Enquiry.---(1) The controller may cause an enquiry to be made, by any person appointed in this behalf into the affairs of any venture capital company registered under these rules or any of its directors, managers or other officers.

(2) Where an enquiry under sub-rule (1) has been undertaken every director, manager or other officer of the Fund Manager to which or to whose director, manager or other officer the enquiry relates and every other person who has had any dealing with such venture capital company, fund manager, director, partner, manager or officer shall furnish such information in his custody, power or within his knowledge relating to or having bearing on the subject-matter of the enquiry as the person conducting the enquiry may by notice in writing require.

(3) The person conducting any enquiry under sub-rule (1) may call for, inspect and seize books of account

and documents in possession of any such fund manager or person.

15. Cancellation of registration.--- (1) Where the Controller is of opinion that a venture capital company has contravened any provision, or has failed to comply with any requirement of an, rule or direction made or given thereunder. the Controller may if he considers necessary),. in the public interest so to do by order in writing cancel the registration of the venture capital company.

Provided that no such order shall be made except after giving the company an opportunity of being heard.

16. Filling of annual report with the Controller.--- A copy of the annual report together with copies of the balance sheet, income and expenditure account and the auditors' report of the venture capital company shall be furnished to the Controller within six months of the close of the accounting period.

17. Monitoring and regulation. --- For the purpose of monitoring and regulation, a venture capital company shall be treated as a non banking financial institution and be subject to such monitoring and regulation arrangements as may be prescribed by the State Bank of Pakistan from time to time.

18. Application of rules to existing companies.--- (1) A venture capital company which, immediately before commencement of these rules, was functioning shall be deemed to have been registered under these rules; and

(2) all provision of these rules shall apply to such company.

CHAPTER III REGULATION OF THE BUSINESS OF FUND MANGERS

19. No person to commence business without registration.---No person shall commence business as a Fund Manager unless such person is registered with the Controller under these rules.

20. Eligibility for registration of Fund Manager--- Any person proposing to commence business as a Fund Manager shall be eligible for registration under these rules if it fulfils or complies with following conditions or requirements, namely:--

(i) that such person is registered as company under the Ordinance;

(ii). that no director, officer or employee of such company has been convicted of fraud or breach of trust;

(iii). that no director, officer or employee of such company has been adjudicated an insolvent or has suspended payment or has compounded with his creditors;

(iv) that the directors of such company are, to the satisfaction of the Authority, persons of means and integrity and have special knowledge of the matters which the company may have to deal with as a Fund Manager,

(v). that the Company has a written contract with at least one institution of international repute and connections which has the necessary skill, knowledge and experience in the matters relating to business strategy, financial and investment advice: and

(vi). that the chief executive officer of the company is professionally qualified in business or finance and has at least ten years post qualification experience in matters relating to accounting banking, business and investment advisory, service.

21. Registration of Fund Manger.--- (1) Any company which is eligible for registration under rule 20 as a Fund Manager may make an application in Form IV to the Controller for registration under these rules.

(2) An application under sub-rule (1) shall, besides the other documents referred to in Form IV, be accompanied by an undertaking that the company shall at all times maintain a net capital balance in the capital account of an amount which is not less than one hundred thousand rupees.

(3) The Controller may, after satisfying himself that the applicant is eligible for registration and that it would be in the interest of the capital market so to do, grant a certificate of registration to such company in Form V.

22. Submission of annual report to Controller.---Every fund Manager shall submit to the Controller an annual report, together with a balance-sheet and income and expenditure account, auditor's report, and particulars of personnel within six months of the close of its year of account.

23. Enquiry.--- (1) The Controller may cause an enquiry to be made by any person appointed in this behalf into the affairs of any Fund Manager registered under these rules or any of its directors, managers or other officers.

(2) Where an enquiry under sub-rule (1) has been undertaken every director, manager or other officer of the Fund Manager to which or to whose director, manager or other officer the enquiry relates and every other person who has had any dealing with such venture capital company, fund manager, director partner, manager or officer shall furnish such information in his custody, power or within his knowledge relating to or having bearing on the subject matter of the enquiry. as the person conducting the enquiry may, by notice in writing require.

(3) The person conducting any enquiry under sub-rule (1) may call for, inspect and seize books of account and documents in possession of any such Fund Manager or Person.

24. Cancellation of Registration.---(1) Where the Controller is of opinion that a Fund Manager has contravened any provision, or has failed to comply with any requirement of the Ordinance or of any rule or direction made or give thereunder, the Controllers may, if he considers necessary in the public interest so to do by order in writing.--

(i) cancel the registration of the Fund Manger; or

(ii). remove the Fund Manager from the office of Fund Manager of a venture capital company.

Provided that no such order shall be made except after giving the fund Manager an opportunity of being heard.

25. Retirement of Fund Manager. --- A Fund Manager shall, retire from the management of the venture capital company if.--

(a). the Fund Manager goes into liquidation, becomes bankrupt or have appointed a receiver over its assets; and

(b). in all other cases as provided for in the formation documents of the venture capital company and the fund Manager.

26. Appointment of Auditor--- (1) A Fund Manager shall appoint an auditor who is a Chartered Accountant.

(2) The auditor appointed under sub-rule (1) shall be independent of the auditor of the venture capital company.

THE SCHEDULE
FORM I

[See rule 3(1)]

**INFORMATION TO BE SUPPLIED FOR OBTAINING PERMISSION TO FORM A VENTURE
CAPITAL COMPANY**

1. Name, former name, if any, father/Husband's name, nationality, residential and business address, national tax number, present occupation of each sponsor, proposed Chief Executive and proposed Chairman of the Board.
2. Names of companies firms and other organisations of which the aforesaid sponsors, proposed Chief Executive and proposed Chairman are or have been directors partners or office holders during the last ten years. Copies of annual accounts of such companies and firms for the last three years alongwith summary of their paid-up Capital, free reserves, profit after tax and dividend payment to be provided.
3. Financial soundness, educational as well as professional qualifications and experience of persons mentioned in paragraph I above, supported by documentary evidence.
4. Percentage of capital each sponsor proposes to contribute in the proposed company.
5. Feasibility report of the proposed company.
6. Evidence of payment of income tax and wealth tax by the sponsors in individual capacity as well as by the companies, firms, etc., wherein they are or have been directors during the preceding five years.
7. Wealth return evidencing net-worth of each sponsor
8. Names of the bankers of the sponsors alongwith their account numbers.
9. Draft of the Memorandum and Articles of Association.
10. Affidavit from each person mentioned in paragraph I above, stating that---
 - (a). he has not been associated with any illegal banking business, deposit taking and financial dealings;
 - (b). he or companies in which he is a director or has a financial interest have over-due loans or instalments outstanding towards banks and other financial institutions:
 - (c). neither he nor companies in which he is a director and has a financial interest have any case pending or decided for default of taxes as on the date of application;
 - (d) he has not been sponsor, director or a financial interest holder major shareholder or chief executive of a defaulting co-operative finance society or defaulting finance company;
 - (e). he has never been convicted of fraud or breach of trust or of an offence involving moral turpitude or removed from service; and .
 - (f). he has neither been adjudged an insolvent nor has suspended payment or defaulted in making payments, or has compounded with his creditors or has been found guilty of any offence under Companies Ordinance, 1984 (XLVII of 1984).
11. The reputation of the applicant's proposed Chief Executive should not have come adverse notice.

FORM II

[See Rule 5]

FORM OF APPLICATION FOR REGISTRATION OF A VENTURE CAPITAL COMPANY

To

The Controller of Capital Issues,
Government of Pakistan.

Islamabad.

Dear Sir,

We hereby apply for the grant of registration of.....
(Name of venture capital company)

2. An undertaking (in original) from the Venture Capital Company in terms of rule 5 of the aforesaid para and four copies of each of the following documents (one each certified by the registrar) are enclosed:

(i). Memorandum and Articles of association;

(ii). Certificate of incorporation.

(iii). Certificate of minimum subscription for an amount of Rs. 100 million from the auditor of the company.

3. We hereby undertake to take all steps necessary, to have the company listed by us listed on a stock exchange.

4. Necessary. information required in the annex to this form is furnished. We undertake to keep this information up-to-date at all times.

Your faithfully.
Signature of the Secretary or a director
the applicant

Annex to Form II

- 1.Name, address and telephone number (s) of the applicant -----
2. Names and Addresses of directors. -----
- 3.Whether any director has been convicted of fraud or breach of trust. -----
- 4.Whether any director has been adjudicated as insolvent or has suspended payment or has compounded with his creditors. -----
- 5.Name and addresses of senior management / officers -----
- 6.Whether any officer has been convicted for fraud or breach of trust. -----
- 7.Whether any officer has been adjudicated as insolvent or has suspended payment or has compounded with his creditors. -----
- 8.. Whether any director or officer has any interest in venture capital company or any investment adviser. -----
9. What is the financial standing of the directors. -----
10. Give a brief description of the kind of the organisation setup, previous professional experience of directors and officers, -----

FORM III
[See rule 6(3)]

**CERTIFICATE OF REGISTRATION AS A VENTURE CAPITAL COMPANY GOVERNMENT
OF PAKISTAN CORPORATE LAW AUTHORITY**

Islamabad, the

The Controller of Capital Issues having considered the applicant for registration under rule 5 of the Venture Capital Companies and Fund Managers Rules, 1995, by para *and being satisfied that the said * is eligible for registration and that it would be in the interest of the capital market so to do, hereby grants, in exercise of the powers conferred by rule 6 of the aforesaid Rules, registration to *subject to the conditions stated herein below.

(Signature of the Officer)

Name of the Company

FORM IV
[See rule 21]
FORM OF APPLICATION FOR REGISTRATION AS FUND MANAGER

To

The Controller of Capital Issues,
Government of Pakistan,
Islamabad.

Dear Sir,

We hereby apply for the grant of registration of under (Name of company) rule 21 of the Venture Capital Companies and Fund Managers Rules, 1995.

2. Four copies of the memorandum and Articles of Association are enclosed.
3. We hereby, undertake to maintain at all times a net capital in the capital account of an amount which is not less than Rupees one hundred thousand.
4. Necessary. information required in the annex to this form is furnished. We undertake to keep this information up-to date at all time.

Your faithfully.

Signature of the Secretary. or a Director of the application

Annex to Form IV

- 1.Name, Address and telephone number(s) of applicant -----
2. Names and address of directors -----
- 3.Whether any director has been convicted of fraud or breach of trust -----
- 4.Whether any director has been adjudicated an insolvent or has suspended payment or has compounded with his creditors. -----

- 5.Names and addresses of officers and employees. -----
- 6.Whether any officer or employee has been convicted for fraud or breach of trust. -----
- 7.Whether any officer or employee has been adjudicated an insolvent or has
suspended payment or has compounded with his creditors -----
- 8.Whether any director or officer has any interest any venture capital company -----
- 9. What is the financial standing of the directors. -----
- 10.Give a brief description of the kind of fund management advisory services
proposed to be provided, the organisational set up, previous professional experience
of directors, officers, etc -----

FORM V
[See rule 21 (3)]
CERTIFICATE OF REGISTRATION AS A FUND MANAGER

Islamabad the

The Controller of Capital Issues having considered the applicant for registration under rule 21 of the Venture Capital Companies and Fund Managers Rules, 1995, by * and being satisfied that the said *..... is eligible for registration and that it would be in the interest of the capital market so to do, hereby grants, in exercise of the powers conferred by rule 21 of the Venture Capital Companies and Fund Managers Rules, 1995, registration to *.....subject to the conditions stated herein below or as may be prescribed or imposed hereafter.

.....
*Name of the company

.....
(Signature of the office)