**Securities and Exchange Commission of Pakistan**

|  |
| --- |
|  |
| Draft Private Placement Memorandum |
| **For Trust Structure** |

|  |
| --- |
|  |

This page intentionally left blank.

**Name of Private Fund Management Company**

**(Any other relevant details about PFMC)**

**Private Placement Memorandum**

**Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Private Placement Memorandum**

**Name of the Private Fund**

Private Fund sub-categorized as (Type of Private Fund as per sub-categorization provided under Venture/Alternative Fund (Hedge)/Shariah etc.) per regulation 2(i) & 11 (6) of Private Funds Regulations, 2015

[(Unlisted Close-End (PE & VC/Alternative) / Open-End Fund (Alternative)]

MANAGED BY

**[Name of Private Fund Management Company]**

Complete Registered Office Address of PFMC

TRUSTEE

**Name of Trustee**

Complete Registered Office Address of the Trustee

**(*****Where applicable)***

**(SHARIAH COMPLIANT)**

(DULY VETTED BY SHARIAH ADVISOR)

(NAMELY----------------)

(Registration No. ---------------------------)

Auditor to The Private Fund

Name of the auditor

Date of Publication of Private Placement Memorandum

Dated:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**DISCLAIMER**

This Private Placement Memorandum has been prepared and approved by the Directors of the Private Fund Management Company and they collectively and individually accept full responsibility for the accuracy of all information contained herein and confirm having made all inquiries which are reasonable in the circumstances, that to the best of their knowledge and belief, there are no other facts omitted which would make any statement herein misleading.

The Securities and Exchange Commission of Pakistan (SECP) has registered the Private Fund as a Notified Entity, and that the registration of the Private Fund shall not be taken that the Securities and Exchange Commission of Pakistan recommends the investments or takes any responsibility of what so ever nature with respect to investments.

This Private Placement Memorandum is intended solely for the use of the person to whom it has been delivered for the purpose of evaluating a possible investment by the recipient in the Units and is not to be reproduced or distributed to any other person without the prior written consent of the Private Fund Management Company. By accepting delivery of this Private Placement Memorandum, each Eligible Investor agrees to the foregoing and agrees to return or destroy this Private Placement Memorandum if it does not wish to invest in the Private Fund.

Eligible Investors should not interpret the contents of this Private Placement Memorandum as legal, investment, tax or other advice. Each Eligible Investor must rely upon its own representatives, including its own legal advisors and accountants, as to legal, economic, tax and related aspects of the investment described herein.

**INVESTMENT WARNING**

This Fund has been established in Pakistan as a Private Fund. It is only open for investments by Eligible Investors who fall within the definition of “Eligible Investors” within the meaning of Regulation 2(1)(iii) of Private Fund Regulations, 2015 which is reproduced as under:

*“Eligible Investor" means a person who has net assets of at least Rs. 15 million excluding the value of personal residence and who furnishes a declaration to the Private Fund Management Company that he understands the risks of investment in a Private Fund;*

This Private Fund is only suitable for investment by professional or experienced Investors. Regulatory requirements, which may be seen as necessary for the protection of retail Investors or those who are not Eligible Investors, do not apply to Private Funds.

By declaring (as per annexure 02 of the Private Placement Memorandum) that you have read this warning and understood and accepted its terms you are expressly agreeing that you are an Eligible Investor within the meaning of Regulation 2(1)(iii) of Private Fund Regulations, 2015. You are also expressly agreeing that you accept the risks in the investment accordingly.

**TABLE OF CONTENTS (TOC)**

1. KEY DATA AND SUMMARY OF THE private FUND 9

2. OVERVIEW AND CONSTITUTION OF THE PRIVATE FUND 12

3. KEY INFORMATION AND POLICIES 14

4. name of the private Fund 22

5. category of the private fund 22

6. purpose & objective of the private Fund 22

7. benchmark / target return 22

8. BorrowingArrangement / Restrictions (For Private fund/ALTERNATIVEFund)/Shariah Compliant FinancingArrangements / Restrictions (For Shariah Compliant PRIVATE Fund) 22

9. THE PRIVATE FUND MANAGEMENT COMPANY 24

10. INVESTMENT POLICY AND STRATEGY OF THE PRIVATE FUND 26

11. Investment Process 27

12. INVESTMENT COMMITTEE (IC) 29

13. VALUATION AND PRICING 31

14. INCOME DISTRIBUTION POLICY 32

15. FEES AND CHARGES 33

16. DISCLOSURES, RECORDS AND REPORTING TO THE UNIT HOLDERS 36

17. INVESTMENT RISKS 38

18. TAXATION/Zakat on the private fund 42

19. THE TRUSTEE – NAME OF TRUSTEE 44

20. AUDITOR OF THE private FUND 48

21. BANKERS 49

22. SHARIAH GOVERNANCE 49

23. OTHER ADVISORS AND AGENTS 51

24. Change of the Private Fund Management Company 51

25. Retirement or Removal of Trustee 53

26. Revocation of Trust/Private Fund 54

Annexure “1”: Term Sheet 56

Annexure “2” DECLARATION BY ELIGIBLE INVESTOR 61

Glossary 62

# KEY DATA AND SUMMARY OF THE PRIVATE FUND

|  |  |
| --- | --- |
| **Private Fund Name** | **Name of the Private Fund** |
| **Private Fund Type** | **Provide the relevant type of the Private Fund i.e. [(Unlisted Close-End (PE & VC/Alternative) / Open-End Fund (Alternative)]** |
| **Category of the Private Fund** | Private Equity and Venture Capital Fund, Alternative Fund etc. |
| **Private Fund Management Company** | Name of the Private Fund Company Limited. |
| **Term** | The term of the Fund will be **X years** from the date of First Closing. |
| **Investment Objective** | State the objectives of the Private Fund that will be employed to generate a desirable return (mentioned any specification of the return e.g. Alpha, Beta etc.) for the Unit Holders. |
| **Investment Strategy** | This should be in line with the Trust Deed.  Provide the investment strategy of the Private Fund in bullet form.   1. **State your areas of Investment.** 2. **Long/short positions in case of Alternative Fund.** |
| **Target Return** | **Provide Target Return and insert disclosures on the following lines, if relevant:**   1. There can be no assurance that the Private Fund will achieve its target return. 2. The provision of a benchmark rate is indicative only of the expected performance of the Private Fund and in no circumstances, whatsoever is to be construed by an Eligible Investor as a commitment, assurance, warranty or guarantee. |
| **Private Fund Size** | It is expected that the Private Fund will have assets of an aggregate maximum amount of **[Size of fund in PKR in numbers & words]** under its management. Private Fund Management Company, if required, may increase size of the Private Fund as per Regulations, 2015 and Trust deed. |
| **Minimum Investment**  **Amount by an Eligible Investor** | Please provide:   1. [Size of the minimum investment] in PKR millions per Investor. 2. Minimum number of Units offered against the minimum investment. 3. Price per Unit in PKR. |
| **Maximum Number of Eligible Investors** | Total number of Eligible Investors in a Private Fund does not exceed fifty (50) or number as defined in Private Placement of Securities Rule, 2017.  Provided that the above restriction shall not apply to investor as Qualified Institutional Buyer. |
| **Drawdowns** | When will the commitments be called during draw down and on what basis i.e. on-need / pre-decided plan.  Also provide utilization plan of the commitments called during draw downs.  Eligible investors will be given at least X business days prior written notice to each drawdown. |
| **Formation Cost** | **Provide the following disclaimer:**  The Private Fund will bear all costs and expenses associated with the launch of the Private Fund including any government and professional fees and expenses in connection with the preparation of documents or related expenses to form the Private Fund until the Final closing of the Private Fund. |
| **Transaction Cost for proposed investments** | **Provide the following disclaimer:**  Transaction costs including all third-party expenses for proposed investment to be paid by the Private Fund. |
| **Operating Expenses of the Fund** | The Private Fund will bear all other expenses incidental to its operations and business. The Private Fund shall be responsible for and shall discharge or reimburse the Private Fund Management Company, where applicable. |
| **Private Fund Management Company’s Expense** | **Provide the following disclaimer:**  The Private Fund Management Company will be responsible for providing and paying for all office personnel, employee benefits, travel expenses of employees of the Private Fund Management Company and its affiliates, office space and office facilities required for the performance of its services to the Private Fund. |
| **Broken Deal Expenses** | The Private Fund will bear all fees and expenses of potential portfolio investment, including all third-party expenses incurred in connection with transactions that are not consummated (“Broken Deal Expenses”). |
| **Reinvestment of Capital Investment** | **Provide the following disclaimer:**  On realization of any investment during the life of Private Fund, an amount equal to the acquisition cost of such investment may be available for further investment by the Private Fund at the discretion of the Private Fund Management Company. |
| **First and Subsequent Closing** | The First Closing will take place once the Private Fund has received an amount against first drawdown Notice, as the Private Fund may determine in Capital Commitments from Unit Holders.  Subsequent Closing (if required) may occur at Private Fund Management Company’s discretion, with the Final Closing to be held no later than **X** years from the date of First Closing, however, that the Private Fund Management Company may extend the date of the Final Closing. |
| **Investment Period** | **This should be in line with the Trust Deed.**  The Private Fund intends to make all initial investments in portfolio companies during an Investment Period of X years from the date of First Closing. The Investment period could be extended by the Private Fund Management Company to complete transactions that were in process as such date. Additional follow-on investments may be made into existing portfolio companies at any time until the termination of the Private Fund. The Private Fund may also be terminated earlier in accordance with the Constitutive Documents. |
| **Investment Restrictions and Conditions** | The Private Fund Management Company on behalf of the Private Fund shall make investments which are in conformity with its investment strategy. Details are provided in the section 10.4 of the Private Placement Memorandum. |
| **Redemption of units** | The Units once issued shall not be redeemable until the end of the term, or until the Private Fund is revoked or terminated, however, Units shall be transferable, subject to the condition that the transferee qualifies as an Eligible Investor. |
| **Management Fee** | The Private Fund Management Company will be entitled to receive an annual management fee (The Management Fee) as per its discretion, details of which should be provided here. |
| **Carried interest** | Performance fee of [X%] will be distributable to the Private Fund Management Company only after a full return to the Eligible investors of their Contributed capital and Preferred Return.  The performance fee shall be distributed as per the distribution waterfall elaborated in clause 14.4 of this Private Placement Memorandum. |
| **Preferred Return** | [**X%** p.a.] (PKR terms) |
| **Distribution of Income** | All amounts allocated to the Unit Holders and the Private Fund Management Company, after payment of or making appropriate provision (if any) for costs, liabilities and Management Fees, shall be distributed in the following order, e.g.:   1. Firstly, to the Unit Holders (pro rata to their respective Capital Contributions) until they have received back their aggregate drawn down Commitments. 2. Secondly, further distributions will go to Unit Holders until they receive the preferred return **(X%),** compounded annually, on their investment. 3. Thirdly, catchup of **X%** to the Private Fund Management Company until it has received **X%** of the cumulative amounts distributed with respect to the Preferred Return. 4. Fourthly, all remaining amount would be split on an **X%/X%** basis i.e., **X%** to the Unit holders and **X%** to the Private Fund Management Company. |
| **Financing** | 1. The short term borrowing by a Private Equity and Venture Capital Fund shall not exceed fifteen percent (15%) of the size of that Private Equity and Venture Capital Fund; 2. The long term borrowing by a Private Equity and Venture Capital Fund shall only be repayable on the date of maturity of that Private Equity and Venture Capital Fund or shall only be obtained against an instrument convertible into equity. |
| **Investment Decisions** | The Investment Committee will be appointed by the Private Fund Management Company and will make all investment decisions. The Private Fund Management Company may add, replace or appoint alternative members to the Investment Committee from time to time. |
| **Liquidity Management** | The Private Fund may make cash deposits, or investments in conventional/shariah compliant income yielding instruments with a maturity less than or equal to **X months,** to effectively manage its cash and liquidity requirement. |
| **Use of Proceeds** | The Private Fund will invest, directly or indirectly, in the investments. The Private Fund will also use the offering proceeds to pay or reimburse the Private Fund Management Company and its affiliates for legal, accounting, due diligence and other expenses relating to the formation or operation of the Private Fund, to pay fees to the Private Fund Management Company as described herein, to provide working capital for the Private Fund and to establish reasonable reserves to meet the Private Fund’s obligations. |
| **Defaulting Unit Holder** | A Unit Holder who fails to pay the amount specified in the Drawdown Notice the “Defaulting Unit Holder” by the date mentioned in the such drawdown notice and delay continue for more than 30 days from the due date mentioned in Drawdown Notice or Investors expressly in writing withdraw its commitment will be subject to certain remedies more fully set out in the Constitutive Documents, including suspension of all rights attached to any units held by it. |
| **Indemnification** | The Private Fund Management Company, the Trustee, any person who serves on the board of a portfolio company (or in a similar capacity) on behalf of the fund at the request of the Private Fund Management Company, the members of any Committees, and such persons’ respective partners, members, officers and agents, including the Principals (each an “Indemnitee”) shall be entitled to usual indemnities and will not be liable to the Private Fund for any loss suffered by the Private Fund which arises out of any act performed or omission unless such course of conduct constituted fraud, wilful misconduct or gross negligence as specified in the Constitutive Documents. |
| **Trustee** | |  |  |  | | --- | --- | --- | | **Net Assets**  **(Rupees in millions)** | | **Tariff** | | From | To | | 1 | 1,000 | **Rs. X** million or **X%** per annum of net assets whichever is higher | | 1,000 | and above | **Rs. X** million plus **X%** per annum of net assets on amount exceeding **Rs. X** billion. | |

# OVERVIEW AND CONSTITUTION OF THE PRIVATE FUND

## Regulatory Approval and Consent

The Securities and Exchange Commission of Pakistan (SECP) has authorized the offer of Units of the Private Fund and has registered the Private Fund as a Notified Entity under Regulation 5 of the Regulations, 2015 vide letter no. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** dated **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.** A copy of Private Placement Memorandum has also been submitted to the SECP pursuant to the Regulation 5 of the Regulations, 2015. no. \_\_\_\_\_\_\_ dated \_\_\_\_\_.

It must be clearly understood that, the SECP does not take any responsibility for the financial soundness of the Fund and Shariah compliance of the Fund nor for the accuracy of any statement made or any opinion expressed in this Private Placement Memorandum.

## Constitution of the Private Fund

The Fund is a Private Fund sub-categorized as a Private Equity and Venture Capital Fund /Alternative Fund in a closed-end/open-end structure and has been constituted by a Trust Deed entered into at **[Name of City]** on **[Date]** between:

**Name of PFMC,** a Non-Banking Finance Company incorporated under the Companies Act 2017 and licensed by SECP to undertake Private Fund Management Services, with its principal place of business at **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,** as the Management Company; and

**Name of Trustee** incorporated in Pakistan under the Companies Ordinance, 1984, Companies Act, 2017 and registered by SECP to act as a Trustee of the Private Fund, having its registered office at **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,** as the Trustee.

## Trust Deed

The Trust Deed is subject to and governed by the laws of Pakistan, including Part VIIIA of the repealed Companies Ordinance, 1984, Companies Act, 2017, the Non-Banking Finance Companies (Establishment and Regulations) Rules, 2003, Non-Banking Finance Companies (Establishment and Regulations) Regulations, 2008, Private Funds Regulations, 2015, ITO, 2001, Foreign Exchange Manual, Foreign Exchange Regulation Act, 1947 and all applicable rules, regulations, directives, orders and circulars by the Commission, FBR, SBP or any other authority having jurisdiction over the Private Fund Management Company, the Private Fund and the Trustee, all as may be issued or amended or replaced from time to time, including Shariah Advisor Guidelines (where applicable). The terms and conditions in the Trust Deed and any supplemental Trust Deed(s) shall be binding on each Unit Holder. In the event of any conflict between the Private Placement Memorandum and the Trust Deed the latter shall supersede and prevail over the provisions contained in this Private Placement Memorandum. In the event of any conflict between the Trust Deed and the Rules or Regulations 2015, Regulation 2008 and Circulars issued by Commission, the latter shall supersede and prevail over the provisions contained in the Trust Deed.

## Trust Property

1. The aggregate proceeds of all Units issued to all Unit Holders from time to time shall constitute part of the Trust Property and includes the Investment and all income, profit and other benefits arising therefrom and all cash, bank balances and other assets and property of every description for the time being held or deemed to be held upon trust by the Trustee for the benefit of the Unit Holder(s) pursuant to the Trust Deed.
2. Bank accounts for the Private Fund (Shariah Compliant Bank Account in case of Shariah Compliant Private Fund) shall always be in the name of the Trustee with the title “Name of Trustee-Trustee [Name of the Private Fund].
3. The Trust Property shall initially be constituted out of the proceeds received from Eligible Investors/Unit Holder after deducting any applicable charges therefrom.
4. Except as specifically provided in the Trust Deed, Private Placement Memorandum, and / or under Applicable Law, the Trust Property shall always be kept as separate property free from any mortgages, charges, liens or any other encumbrances whatsoever and the Trustee or the Custodian shall not, except for the purpose of the Fund as directed by the Private Fund Management Company, create or purport to create any mortgages, charges, liens or any other encumbrance whatsoever to secure any loan, guarantee or any other obligation actual or contingent incurred assumed or undertaken by the Trustee or the Custodian or any other person.

## Private Placement Memorandum

This Private Placement Memorandum sets out the arrangements covering the basic structure of the Private Fund. It sets forth information about the Private Fund that a prospective Eligible Investor should know before investing in Private Fund. The provisions of the Trust Deed, the Rules, the Regulations 2015, Regulations 2008 (and the Shariah guidelines), circulars, directives and Shariah Advisor guidelines by the SECP etc. as specified hereafter govern this Private Placement Memorandum.

All investments of the Private Fund shall be in adherence to the principles of Shariah. It is possible that adherence to principles of Shariah will cause the Private Fund to perform differently from Private Funds with similar objectives, but that are not subject to the requirements of principles of Shariah.

The provisions of the Trust Deed and Applicable Laws govern this Private Placement Memorandum. It sets forth information about the Private Fund that a prospective Eligible Investor should know before investing in any Unit. Prospective Eligible Investors in their own interest are advised to carefully read this Private Placement Memorandum to understand the Investment Policy and Investment strategy of the Private Fund, investment Risks, warnings and disclaimers and should also consult their legal, financial and or any other professional advisor before investing. The Private Fund Management Company shall not be liable for any loss to the Eligible Investors or Unit holder for any reason whatsoever unless caused by its gross negligence or fraud.

## Modification of Private Placement Memorandum

This Private Placement Memorandum shall be modified and updated to take account of any relevant material changes to the Fund. Any change in the fundamental attributes of the Private Fund including investment objective, policy and structure of the Private Fund shall only be affected upon approval of not less than seventy five percent (75%) of the Unit Holder on terms of value of the Private Fund unless otherwise specifically provided in the Constitutive Documents of the Private Fund. The updated Private Placement Memorandum shall be submitted to the Commission and the Trustee, and circulated to all Unit Holders subject to Regulations, 2015.

The Private Fund Management Company shall also have the right to, at its discretion, whenever the need so arises, provided that the amendment shall not adversely impact the fundamental attributes of the Private Fund or have any adverse or prejudicial impact on the interest of the Unit Holders, update and modify this Private Placement Memorandum to reflect minor changes for better operation and functioning of the Private Fund.

## Approvals and Filing of the Private Placement Memorandum

The Management Company has filed a copy of the Private Placement Memorandum signed by the Chief Executive along with the Trust Deed with SECP. Copies of the following documents can be inspected at the registered office of the Management Company or the place of business of the Trustee:

1. License No**.** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ dated **\_\_\_\_\_\_\_\_\_\_\_\_\_** granted by SECP to **Name of PFMC** to carry out Private Fund Management Services;
2. **Name of PMFC** has appointed the **Name of trustee** as the Trustee of the Private Fund;
3. Trust Deed of the Private Fund;
4. SECP’s Letter No. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**dated **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** registering the Private Fund in terms of Regulations, 2015.
5. Letters No. **XXXX** from Chartered Accountants, Auditors of the Private Fund, consenting to the issue of statements and reports;
6. Letter No. from **XXXX** Legal Advisers of the Private Fund, consenting to act as adviser; and
7. Letters No. **XXXX** dated from **name of Shariah Advisors (in case of Shariah Complaint Fund)** consenting to act as Shariah advisor of **Name of Private Fund.**

# KEY INFORMATION AND POLICIES

## Offering

Prospective Investors will be offered an opportunity to become Eligible Investors of the Private Fund which will invest in private placement transactions or other Private Equity or Venture Capital Fund/Alternative Funds. An investment in the Private Fund is suitable only for certain Investors who have no need for liquidity in the investment. The Private Fund does/does not intend to offer to repurchase Units from Investors.

## Term and Duration

The Private Fund will have a finite term in case of close end and infinite term in case of open end. The Private Fund having finite term will remain in existence for a **period of X years** from the date of First Closing. The Investment Period for the Private Fund having finite term may be extended by the Private Fund Management Company to allow for completion transactions that were in process as such date. Reinvestments or Additional follow-on investments may be made into existing portfolio companies at any time until the termination of the Private Fund. The Private Fund having finite term may also be terminated earlier in accordance with the Constitutive Documents.

## Capital Commitments and Drawdowns

(All major areas covered in the sample must be addressed. Although, the relevant data must be filled in accordance with the details true to the conditions the PFMC/Private Fund wants to lay out, which might not necessarily be exactly as pointed below).

The Private Fund is seeking Capital Commitments from Eligible Investors. The minimum Capital Commitment from a single Eligible Investor to the Private Fund is **PKR X Million**, the Private Fund Management Company, however reserves the right to accept Capital Commitments to the Private Fund of lesser amounts at its sole discretion and subject to the Regulations,2015.

The Private Fund has not yet identified the potential portfolio investments to which it will commit. An Investor’s full Capital Commitment to the Private Fund will not be immediately invested. The Private Fund will draw Capital Commitments as capital is drawn from the underlying portfolio investments. Capital Commitments to the Private Fund may be drawn down at any time by the Private Fund issuing a capital call generally upon at least (X) business days’ prior written notice (including via e-mail) to each Investor or its designee under normal circumstances.

It is possible that the Private Fund may draw down all of its aggregate Capital Commitments at the start or never draw down the full amount of Capital Commitments and that the Private Fund may have unfunded Commitments. The Private Fund also may accelerate or extend any capital calls.

Eligible Investors understand that by agreeing to invest in the Private Fund, each Investor is making an irrevocable Capital Commitment to the Private Fund of the entire amount of such commitment, which will be drawn down over time. Even though not all of the money will be requested immediately, when a capital call is issued, each Investor is committing to make its funds available within the designated time.

## Closings

All the major areas covered in the sample must be addressed. Although, the relevant data must be filled in accordance with the details true to the conditions the PFMC/Private Fund wants to lay out, which might not necessarily be exactly as pointed below.

The First Closing will take place once the Private Fund has received an amount against First Drawdown Notice, as the Private Fund may determine in Capital Commitments from Unit Holders. Subsequent Closing (if required) may occur at Private Fund Management Company’s discretion, with the Final Closing to be held no later than X years from the date of First Closing. as such date may be extended by the Private Fund Management Company.

Additional Eligible Investors may be admitted by the Private Fund Management Company at intervals from the First Closing. If the investment recorded a significant appreciation event from the date of the original investment in the Private Fund, such a development would reduce the proportion of these investments allocated to the newly Eligible Investors. Eligible Investors who participate in the closing, which takes place after the First Closing, will be required to pay an amount equal to the costs for the organizational, offering, formation costs of the Private Fund. These amounts will be paid in full as per prior Unit Holders pro-rata to their respective investments. The proportion of such amount which is attributable to the Management Fee component, will be paid to the Private Fund Management Company.

## Purchase /Issuance of Units (Procedure and Frequency)

Person wishing to subscribe to Units would need to meet the criteria for an Eligible Investor under the Regulations,2015 and will be required to execute and deliver a copy of the completed application form before the applicable purchase date. The Private Fund will advise each Eligible Investor promptly of the Fund’s acceptance of an offer to subscribe for Units. Payment of the amount of the subscription in PKR should be made in accordance with the terms of the application form.

The acceptance or rejection of any application for subscription shall be at the sole discretion of the Private Fund Management Company, who may reject an application without ascribing any reasons for the rejection. Units will be issued to an Eligible Investor each time capital is contributed by such Investor to the Private Fund.

## Rights and Liabilities of Unit Holders

All Units and fractions represent an undivided share in the Private Fund and shall rank pari passu according to the number of Units held by each Unit Holder, including as to the rights of the Unit Holder(s) in the Net Assets, earnings and the receipt of the dividends and distributions. Each Unit Holder has a beneficial interest in the Trust Property proportionate to the Units and fractions held by such Unit Holder and shall have such rights and liabilities as are set out in the Trust Deed and this Private Placement Memorandum.

## Redemption or Repurchase of Units (Procedure and Frequency)

No Unit holder has the right to require the Private Fund to redeem their Units. Currently, no public market for the Units exists. In addition, the Private Fund does not intend in the future to offer to repurchase Units. As a result, Investors may not be able to liquidate their investment. An investment in the Private Fund is not appropriate for all Investors, and the Private Fund is not intended to be a complete investment program. The Private Fund is designed as a long-term investment and not as a trading vehicle. The Private Fund may be an appropriate investment for Investors who are prepared to hold Units until the expiration of the Private Fund’s term.

## Transfer of Units

(All major areas covered in the sample must be addressed. Although, the relevant data must be filled in accordance with the details true to the conditions the PFMC/Private Fund wants to lay out, which might not necessarily be exactly as pointed below).

Transfers of Units may be made only with the prior written consent of the Private Fund Management Company, subject to the condition that the transferee qualifies as an Eligible Investor. Transfer of Units from Eligible Investor to another shall be subject to a processing charge of an amount based on actual amount incurred, which shall be recovered from the transferee. This transfer fee will be additional to the number of units transferred and be paid to the Private Fund Management Company.

## Transmission of Units to Successors

(All major areas covered in the sample must be addressed. Although, the relevant data must be filled in accordance with the details true to the conditions the PFMC/Private Fund wants to lay out, which might not necessarily be exactly as pointed below).

Transmission of Units to successors in case of inheritance or distribution of the estate of a deceased Unit Holder shall be processed by the Transfer Agent or the Private Fund Management Company itself as Registrar. The processing ch arge shall not be payable by successors in the case of inheritance or distribution of estate of a deceased Unit Holder. However, the legal costs and taxes, if any, shall be borne and paid by the transferees.

## Increase in the Private Fund Size and Issue of Further Units

(All major areas covered in the sample must be addressed. Although, the relevant data must be filled in accordance with the details true to the conditions the PFMC/Private Fund wants to lay out, which might not necessarily be exactly as pointed below).

If the limit of the Private Fund Size as mentioned in this Private Placement Memorandum is not fully exhausted, the Private Fund Management Company may, at its discretion, issue further Units during the Investment Period of the Private Fund. The Private Fund Management Company may increase size of the Private Fund to meet additional investment requirements in existing portfolio companies subject to the Constitutive Documents, the Regulations, 2015.The Private Fund Management Company, upon the approval of the Unit Holders, may also issue further Units in excess of the Private Fund limit.

Also, provide circumstances and mechanism for increase in the size of Private Fund (See regulation 10 of Regulations, 2015) for further clarity on this sub-heading)

## Use of Proceeds

(All major areas covered in the sample must be addressed. Although, the relevant data must be filled in accordance with the details true to the conditions the PFMC/Private Fund wants to lay out, which might not necessarily be exactly as pointed below).

The Private Fund will invest, directly or indirectly, in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Portfolio companies/securities (In case of Alternative fund)/shariah complaint investments etc.)The Private Fund will also use the offering proceeds to pay or reimburse the Private Fund Management Company and its affiliates for legal, accounting, due diligence and other expenses relating to the formation or operation of the Private Fund, to pay fees to the Private Fund Management Company as described herein, to provide working capital for the Private Fund and to establish reasonable reserves to meet the Private Fund’s obligations.

The proceeds from the sale of Units, will be invested by the Private Fund after receipt of such proceeds in accordance with the Private Fund’s investment objective and strategies, consistent with market conditions and the availability of suitable investments.  Such proceeds will be invested together with any profit earned in the Private Fund’s account prior to the closing of the applicable offering.  Delays in investing the Private Fund’s assets may occur because certain portfolio Private Funds selected by the Private Fund Management Company may provide infrequent opportunities to purchase their securities, or due to the time required for Private Fund Management Company to invest the amounts committed by the Private Fund.

## Default on Capital Commitments

(All major areas covered in the sample must be addressed. Although, the relevant data must be filled in accordance with the details true to the conditions the PFMC/Private Fund wants to lay out, which might not necessarily be exactly as pointed below).

Should an Eligible Investor default on a Capital Commitment, the Private Fund may, in the Private Fund Management Company’s sole discretion, charge a defaulting Eligible Investor with the expenses, claims and losses incurred by the Private Fund due to the default of such Eligible Investor. Such charge may be incurred by the Private Fund specially allocating such expenses and losses to the defaulting Eligible Investor’s capital account, as such is maintained on the books of the Private Fund. In addition, the Private Fund may, in the Private Fund Management Company’s sole discretion, take other actions with respect to defaulting Eligible Investors, including without limitation (**List of actions to be provided in bullet form**):

## Private Fund Size

It is expected that the Private Fund will have assets of an aggregate amount of **PKR XXXXXXXXXX/=** (mention in words) under its management. The Private Fund will issue Units to Eligible Investors at the Subscription Price received for these Units. The base currency for the Private Fund is PKR.

## Minimum Amount of Subscription

Minimum amount of subscription for an Eligible Investor is PKR XX million (X Units at Price of PKR X million per Unit) although the Private Fund Management Company reserves the right to accept lesser amounts at its sole discretion. Total number of Eligible Investors in the Private Fund should not exceed fifty (50) or number as defined in Private Placement of Securities Rule, 2017.

Provided that the above restriction shall not apply to investor as Qualified Institutional Buyer.

## Joint Applications

Joint application may be made; however, such persons shall be deemed to hold Units on first holder basis. Each joint holder must sign the Investment Agreement (and/or Subscription Form), Declaration and Investment Policy Statement and submit such other documents as may be necessary to comply with Applicable Laws.

In the case of Units held jointly, the Trustee shall not issue more than one Unit for the Units held by such joint Unit Holders and delivery of such Unit to the Unit Holder named first therein shall constitute sufficient delivery to all joint Unit Holders.

The Private Fund Management Company shall not register more than **X** joint Unit Holders for a Unit. In case of the death of any one of the joint Unit Holders, the survivor or survivors shall be the only persons recognized by the Trustee as having any title to or interest in the Units held by the joint Unit Holders. Provided however, the Private Fund Management Company or the Trustee may at their discretion, request the survivors to provide succession certificate or other such mandate from a Court or lawful authority, if they consider necessary.

The joint unit holders for a unit should provide an undertaking to the PFMC regarding nomination of the Unit Holder named first.

# name of the Private Fund

**The Private Fund is constituted as “\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_”.**

# category of the private fund

The Private Fund is a (Private Equity and Venture Capital Fund/Alternative fund) sub-categorized as a (Private Equity and Venture Capital/Alternative Fund etc.) which is established in a (closed-end/open end) structure under the Regulations, 2015

# purpose & objective of the Private Fund

State the objectives of the trust that will be employed to generate a desirable return (mention any specification of the return e.g. Alpha, Beta etc.) for the Unit Holders.

This should be inline with the Trust Deed of the Private Fund.

# benchmark

(All major areas covered in the sample must be addressed. Although, the relevant data must be filled in accordance with the details true to the conditions the PFMC/Private Fund wants to lay out, which might not necessarily be exactly as pointed below).

**Provide Target Return and insert disclosures on the following lines, if relevant:**

1. There can be no assurance that the Private Fund will achieve its target returns.
2. The provision of a benchmark rate is indicative only of the expected performance of the Private Fund and in no circumstances, whatsoever is to be construed by an Eligible Investor as a commitment, assurance, warranty or guarantee.

# Borrowing Arrangement / Restrictions (For Private Funds/Alternative Funds), Financing Arrangements / Restrictions (For Shariah Compliant Private Fund)

This section must cover borrowing parameters for the Private fund, maximum amount and basis of borrowing, duration, and whether secured or unsecured) and the risks involved while complying with the following, if and where applicable, that

1. short term borrowing by a Private Equity and Venture Capital Fund shall not

exceed fifteen percent (15%) of the size of that Private Equity and Venture Capital

Fund.

1. the long term borrowing by a Private Equity and Venture Capital Fund shall only be repayable on the date of maturity of that Private Equity and Venture Capital Fund or shall only be obtained against an instrument convertible into equity.
2. financing arrangement will exclusively be made under the Islamic modes of finance and with the approval of the Shariah Advisor of the Private Fund, in case of Shariah compliance funds.
3. Private Fund has borrowed only from financial institution/companies;
4. the liability of the unit holder is limited to their investments in the Private Fund (also mention in the Private Placement Memorandum);

## If subsequent to such financing the Net Assets are reduced as a result of depreciation in the market value of the Trust Property or redemption of Units, the Private Fund Management Company or the Trustee shall not be under any obligation to reduce such financing.

## The charges payable to any bank, non-banking finance companies or financial institution against financing on account of the Private Fund as permissible under Clause above, shall not be higher than the normal prevailing bank charges or normal market rates.

## Neither the Trustee, nor the Private Fund Management Company shall be required to issue any guarantee or provide security over their own assets for securing financings from banks and financial institutions. The Trustee or the Private Fund Management Company shall not in any manner be liable in their personal capacities for repayment of financings.

## For the purposes of securing any financing the Trustee may, subject to clause 2.4 (d) above, on the instruction of the Private Fund Management Company mortgage, charge or pledge in any manner all or any part of the Trust Property.

## Neither the Trustee nor the Private Fund Management Company shall incur any liability by reason of any loss to the Trust or any loss that a Unit Holder(s) may suffer by reason of any depletion in the Net Asset Value for any reason, that may result from any financing arrangement made hereunder in good faith.

## Disposal of Haram Income (in case of Shariah compliant Private Fund)

Where some Haram income accrues to the Private Fund, it will be donated to a registered charitable institution in order to purify the Private Fund's income. This will be done in accordance with the guidelines issued by the Shariah Advisor from time to time.

# THE PRIVATE FUND MANAGEMENT COMPANY

## Introduction of the Private Fund Management Company (PFMC)

## Details of Principal Shareholders

## Profile of Board of Directors

## Management Profile

## Duties, Role and Responsibilities of the Private Fund Management Company

## (This should be in line with Trust Deed and Regulations,2015 and Regulations,2008).

## The Private Fund Management Company shall manage the Private Fund on a discretionary basis in pursuit of the investment objectives and strategy and subject to the restrictions set out in its Constitutive Documents and Applicable Law. Without limiting the generality of the foregoing, the Private Fund Management Company shall perform the functions set out in Regulation 8 of the Regulations,2015 including but not limited to the following:

1. Ensure that investment decisions are consistent with the objectives and investment policy of the Private Fund as contained in the Constitutive Documents;
2. Manage the assets of a Private Fund in the interest of the Unit Holders in good faith and to the best of its ability and without gaining undue advantage for itself or any of its related parties including connected persons and group companies or its officers;
3. Assess or take into consideration the financial sector experience, risk tolerance and net worth of Eligible Investors as per schedule VI of Regulations, 2015 before offering Units of the Private Funds to the Eligible Investor;
4. Prepare and fill the Investment Policy Statement in consultation with the Eligible Investors as per prescribed Schedule VI of the Regulations,2015;
5. Account to the Trustee for any loss in value of the Private Fund where such loss has been caused by its negligence, reckless or willful act or omission;
6. Ensure prevention of money laundering and terrorist financing and abide by applicable laws, directive and circulars issued by the Federal Government and Commission regarding know your customer requirements and safe guard against the involvement in money laundering and terrorist financing;
7. Ensure that investments do not deviate from the Constitutive Documents, Regulations,2015 or directions of the Commission;
8. Develop and follow internal investment restrictions and polices;
9. Review the performance of the Private Fund on regular and timely basis;
10. Ensure that proper record of investment decisions is maintained;
11. Establish and maintain sufficient risk management system and controls to enable it to identify, assess, mitigate, control and monitor risk in the best interest of the Unit Holders;
12. Formulate and implement Board’s approved internal control policies and procedures;
13. Formulate a Board approved risk management policy for identifying, measuring and managing the risks of the investments, including the sources, nature and degree of such risks and shall also make compliance manuals;

## The Private Fund Management Company shall manage, operate and administer the Private Fund in accordance with the Companies Act, 2017, the Rules, the Regulations, 2015, regulations, 2008, directives, circulars and guidelines issued by the Commission, Trust Deed and the Private Placement Memorandum.

## The Private Fund Management Company may from time to time, with the consent of the Trustee, frame procedures for conducting the business of the Private Fund or in respect of any other matter incidental thereto; provided that such procedures are not inconsistent with the provisions of Applicable Laws and the Constitutive Documents.

## The Private Fund Management Company shall not be under any liability except such liability as may be expressly imposed on it under Applicable Laws and the Constitutive Documents, nor shall the Private Fund Management Company (save as herein otherwise provided) be liable for any act or omission of the Trustee, nor for anything except for its own gross negligence or willful breach of duty and the acts and omission, and the acts and omission of all persons to whom it may delegates any of its functions, as if they were its own acts and omissions. If for any reason it becomes impossible or impracticable to carry out the provisions of the Trust Deed and the Private Placement Memorandum, the Private Fund Management Company shall not be under any liability thereof or thereby and it shall not incur any liability by reason of any error of law or any matter or thing done or suffered or omitted to be done in good faith.

## The Private Fund Management Company shall nominate by way of an authority letter /power of attorney or other document as proof of authorization, one or more of its officers(s) to act as authorized persons for interacting with and giving instructions to the Trustee, and shall notify the Trustee of the identities of such authorized persons. Any instruction or notice given by such authorized persons shall be deemed to be the instruction or notice given by the Private Fund Management Company. Any change in such authorized persons shall promptly be notified to the Trustee.

## The Private Fund Management Company shall, from time to time, advice the Trustee of any settlement instruction relating to any transactions entered into by it on behalf of the Private Fund. The Private Fund Management Company shall ensure that settlement instructions are given promptly after entering into the transaction so as to facilitate timely settlement.

## The Private Fund Management Company shall not hold client money. Money within the Private Fund shall be held in accordance with the provision of Applicable Laws and the Constitutive Documents.

## The Private Fund Management Company shall not have authority to hold or have possession of any Investments or other assets of the Private Fund and, unless otherwise directed by the Trustee on behalf of the Private Fund or in any particular respect, custody of all investments and other assets of the Private Fund shall be entrusted to the Trustee. In the exercise of its discretionary investment management of the Private Fund, the Private Fund Management Company shall itself be responsible for reviewing, and taking such actions as it may consider appropriate, in respect of rights, other than income, conferred in respect of any Investments or other assets within the Private Fund.

## The Private Fund Management Company shall be responsible for negotiating and establishing all agreements or arrangements with any other party in relation to the negotiation, implementation of shariah compliant equity and shariah compliant debt arrangement (if applicable) whether on a secured or unsecured basis, financing, trading investment or custody of the assets of the Private Fund including, without limitation, agreements with any broker in relation to the assets of the Private Fund, the establishment of wholly or partly owned companies to hold the assets/including shares forming part of the Private Fund, account opening documentation, ISDA master agreements or other financing or trading agreements, schedule, credit support and other annexes and all documents relating thereto.

## The Private Fund Management Company is authorized to give the brokers, the trustee, the Custodian, administrators, dealers and advisors or counterparties any trade instructions on behalf of the Private Fund, which may be necessary or desirable for the proper performance of the Management Company`s duties under the Constitutive Documents and the Trustee agrees to provide settlement instruction and confirm such authority to such parties on request.

## The Private Fund Management Company may, if it considers necessary for the protection of Trust Property or safeguarding the interest of the Unit holders, request the Trustee to institute or defend any suit, proceeding, arbitration or inquiry or any corporate or shareholders action in respect of the Trust Property or any part thereof at the cost of the Private Fund.

## The Private Fund Management Company shall not be liable in respect of any act or omission of any person, firm or company through whom transaction in investments are affected for the account of the Private Fund or any other party having custody or possession of the assets of the Private Fund or any clearance or settlement system. Provided that Private Fund Management Company have employed reasonable due care and due diligence in this regard.

## The Private Fund Management Company gives no warranty that assets acquired for the investments will not depreciate in value or that they will not be affected by adverse tax consequences.

## The Private Fund Management Company will not be responsible for any loss of opportunity whereby the value of the Private Fund could have been increased or for any decline in the value of the Private Fund howsoever arising, except to the extent that such loss or decline is due to the Private Fund Management Company `s gross negligence, willful default or fraud or that of any of its directors or employees.

## The Private Fund Management Company will not be liable for any loss arising from errors of fact or judgment or any action taken (or omitted to be taken) by it howsoever arising except to the extent that any such error or action (or the omission thereof) is due to the Private Fund Management Company`s gross negligence, willful default or fraud or that of any of its Directors or employees. No warranty is given by the Trustee or Private Fund Management Company as to the performance or profitability of the Private Fund or its Investments or any part of it.

## The services of the Private Fund Management Company hereunder are not to be deemed exclusive. The Private Fund acknowledges that the Private Fund Management Company and its members, officers, employees or associates may from time-to-time act as director, investment manager, manager, investment advisor or dealer in relation to, or be otherwise involved in, investment funds other than the Private Fund, which have similar or different objectives to that of the Private Fund. It is therefore possible that any of them may, in the course of business, have potential conflicts of interest with the Private Fund. Each will, at all times, have regard in such event to its obligations to the Private Fund and will endeavor to ensure that such conflicts are resolved fairly.

# INVESTMENT POLICY AND STRATEGY OF THE PRIVATE FUND

## Objective of the Private Fund

This section shall state the objectives of the trust that will be employed to generate a desirable return (mention any specification of the return e.g. Alpha, Beta etc.) for the Unit Holders.

## Investment Strategy

This should be in line with the Trust Deed. The purpose of the Private Fund is to invest primarily in:

1. State your areas of Investment in bullet form
2. Long/short positions in case of Alternative Fund.

Long/Short Positions.

Any other Strategies.

## Target Return

This section shall disclose target return and provide following disclosures, if relevant:

1. There can be no assurance that the Private Fund will achieve its target returns.
2. The provision of a benchmark rate is indicative only of the expected performance of the Private Fund and in no circumstances, whatsoever is to be construed by an Eligible Investor as a commitment, assurance, warranty or guarantee.

## Investment Conditions and Restrictions

## Investment conditions /restrictions provided in this sub-head by the Private Fund Management Company on behalf of Private Fund shall be within limits of the following:

1. only invest in SECP approved conventional/ shariah compliant assets within Pakistan. (where applicable)
2. the Private Fund may make foreign investments in the Fund from outside Pakistan in foreign currency subject to compliance with all the Rules and the Regulations framed by the State Bank of Pakistan with regard to the foreign investments.
3. make investments which are in conformity with its investment strategy as disclosed in this Private Placement Memorandum.
4. invest with its connected person or connected person of the Trustee only if adequate disclosure to this effect is given in this Private Placement Memorandum and provided that such transaction is done on an arm’s length basis (provide a separate sub-head for Investment with connected persons in the Private Placement Memorandum even if no such transaction is/will be entered into).
5. where the Private Fund Management Company on behalf of Alternative Fund intends to use derivatives, details of their use must be properly and completely disclosed in the Private Placement Memorandum of the Alternative Fund. See Sub-regulation 11 (2) of the Regulations, 2015 for further clarity on this (where applicable).

## A Private Fund Management Company may make investment in Private funds managed by it out of its surplus equity (i.e., over and above the required minimum equity requirements).

## A Private Fund Management Company shall inform the Trustee and the Commission about any breach of the investment conditions and restrictions along with the reasons for the breach, and the proposed steps for rectification and shall rectify the breach within the period of (mention duration).

# Investment Process

This part should contain detailed information about the investment process of the Private Equity and Venture Capital/Alternative Fund.

An Example is provided hereunder, (This list is not exhaustive);

## Identification & Sourcing of Investment/Deal

## Initial Screening of Investment/Deal

## Final Evaluation of Investment/Deal

## Implementation & Execution of Investment/Deal

## Value Creation of Investment/Deal

## Risk & Performance Monitoring of Investment/Deal

## Exit Mechanism of Investment/Deal

# INVESTMENT COMMITTEE (IC)

## Terms of references (ToRs)

## Purpose

Terms of reference of IC are intended to provide a concise overview of the delineation of the key roles and responsibilities of IC members.

## Roles and Responsibilities

**Investment**

1. Act with due care, skill and diligence in carrying out its duties and responsibilities.
2. Preliminary screening of transactions and subsequent approval to proceed.
3. Approve Term Sheet / non-binding bids (if any).
4. Approve Binding Term Sheet.
5. Approve engagement of third-party due diligence advisors.
6. Approve objective and strategy. Ensure that prudent investment decisions are taken before capital drawdown and investment allocations.
7. Ensure rigorous investment analysis is presented before making any investment decision. Ensure that a structured process is adopted but not limited to sourcing, evaluating, selecting and monitoring investment for the Private Fund.
8. Ensure that deal sourcing, pre-selection, due diligence along with all assessments but not limited to tax and legal assessment are conducted.

**Monitoring**

1. Review Private Fund’s redemption rights and Private Fund managers allocation.
2. Review capital allocation and drawdowns of the respective funds.
3. Review the performance of the Private Funds on a half yearly basis
4. Review investee company’s performance (KPIs, financial, etc.) monthly (ideally).
5. Review Investors capital allocation status.
6. Review funds inflow and outflow status.
7. Review investments life cycle and determine impact analysis of funds.
8. Ensure that investments are made accordingly to the Private Placement Memorandum
9. Ensure that portfolio risk monitoring is conducted.

**Policy & Governance**

1. Ensure that investments do not deviate from the Private Placement Memorandum and the Regulations, 2015 along with relevant circulars\directives issued by Commission on periodic basis.
2. Develop investment strategies for the funds within the framework of the Regulations,2015/Private Placement Memorandum.
3. Develop and follow internal investment restrictions and policies.
4. Ensure that proper record of meetings and investment decisions is maintained.
5. Ensure that portfolio planning is conducted and approved after recommendation from IC members.

## Composition

This section shall disclose the composition of IC.

## Quorum

The IC shall have at least X members and must be \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ prior to taking any investment related decision or decisions relating to the responsibilities of the IC. The IC can call other members from the management or specialist (Advisors) to attend the meeting under an invitation by the Chairman. These Advisors will be non-voting members. All decisions shall be made by voting amongst the IC members present in the meeting. The decision with the highest votes will be implemented.

## Frequency of meetings

The IC meeting shall be conducted on monthly basis or else when needed with the approval of the Chairman.

## Decision Making Process

For each transaction evaluation list a typical transaction lifecycle and the number of meetings of IC per deal/investment as per the transaction process defined by the sellers and their advisors.

# VALUATION AND PRICING

## Valuations/Valuation Frequency

The Private Fund is valued at least once in a financial year by an independent valuer appointed with the consent of the trustee (this requirement should be of once in two years for a venture capital Fund).

Valuations of the Private Fund's securities and assets will be conducted by the Private Fund Management Company or any Independent Valuer designated by the Private Fund Management Company on regular basis \_\_\_\_\_\_\_\_ (Disclose frequency). All the Investments shall be valued in accordance with International Accounting Standards (“IAS”) and International Financial Reporting Standards (“IFRS”). The Entry Value will usually be determined by using most suitable valuation approach adjusted for transaction and industry specific factors.

## Valuation Methodology

The valuation methodology must be documented and disclosed in the Private Placement Memorandum specifying how the portfolio is valued and priced; Examples of few of the valuation methodologies are mentioned below:

1. **Market Approach**

-Multiples

-Industry Valuation Benchmarks

-Available Market Prices

1. **Income Approach**

-Discounted Cash Flows

1. **Replacement Cost Approach**

-Net Assets

## Pricing

All transactions in the Units of the Private Fund shall be at the par value i.e. **PKR. X million each.** The Private Fund Management Company will establish and maintain throughout its term, a separate capital account for each Unit Holder.

## Net Asset Value (NAV) Valuation Policy

The total Net Asset Value of the Units will be expressed in PKR. The Private Fund Management Company will normally determine the Net Asset Value as at each Valuation Date by deducting the value of the total liabilities from the value of the total assets on **X Date** and such manner (specify the manner in which the value of the total assets and total liabilities are computed).

# INCOME DISTRIBUTION POLICY

## Dividend Policy

# (All major areas covered in the sample must be addressed. Although, the relevant data must be filled in accordance with the details true to the conditions the PFMC/Private Fund wants to lay out, which might not necessarily be exactly as pointed below).

## The Private Fund does/does not intend to pay dividends either in cash or in kind.

## The Private Fund intends to reinvest /doesn’t not intend to reinvest all of the Fund’s income and gain on other projects, if considered viable by the Private Fund Management Company.

In case the Private Fund decides to distribute dividend, the following shall be disclosed in the Private Placement Memorandum:

## Timing of Distribution

## This section shall disclose the timing of dividend distributions.

## Declaration and Distribution of Proceeds

The Private Fund Management Company may announce the amount of realization proceeds for an Accounting Period and distribute it to the Unit Holders. All payments for Proceeds shall be made through payment instruments or transfer of funds to the Unit Holder's designated bank account, or through any other mode of payment as allowed by the Commission.

## Distribution Waterfall

This section shall disclose the order in which all amounts allocated to the Unit Holders and the Private Fund Management Company, after making appropriate provision (if any) for costs, taxes, liabilities and management fees be distributed. An example of the order in which the distribution can be made is provided as under:

1. Firstly, to the Unit Holders (pro rata to their respective Capital Contributions) until they have received back their aggregate drawn down Commitments.
2. Secondly, further distributions will go to Unit Holders until they receive the preferred return (12%), compounded annually, on their investment.
3. Thirdly, catchup of 100% to the Private Fund Management Company until it has received 20% of the cumulative amounts distributed with respect to the Preferred Return.
4. Fourthly, all remaining amount would be split on an 80%/20% basis i.e., 80% to the Unit Holders and 20% to the Private Fund Management Company.

# FEES AND CHARGES

**(The Private Fund Management Company shall disclose at least the following as per Regulation 8 (xvii) (b) of Regulations, 2015 and point 19 of schedule IV of the regulations, 2015)**

## Fees and Charges Payable by the Private Fund

The Private Fund will bear all fees, costs, routine administrative expenses and other expenses, plus any applicable taxes, related to the ongoing operations of the Private Fund. Details of such expenses and costs are further explained below.

## Formation Cost

The Private Fund will bear all costs and expenses associated with the launch of the Private Fund including any government and professional fees and expenses in connection with the preparation of documents or related expenses to form the Private Fund. All formation costs will be amortized over the life of the Private Fund. The PFMC will be reimbursed these costs against actual costs.

## Transaction Costs

Transaction costs for successful deals including all third-party expenses for proposed investment to be paid by the Private Fund at actual as and when incurred. The Private Fund will also bear all fees and expenses of potential portfolio investment, including all third-party expenses incurred in connection with transactions that are not consummated (“Broken Deal Expenses”). If the Private Fund Management Company is able to negotiate a compensation payment from a broken deal, such amounts would be reimbursed to the Private Fund.

## Subscription / Structuring Fee

## An initial one-time subscription / structuring Fee of up to X% of Total Committed Capital will be charged and deducted upfront from the Eligible Investor’s invested capital in the Private Fund.

## Management Fee

The Private Fund Management Company shall clearly disclose the terms of the management fee including its amount, basis of accrual and payment mechanism.

Any increase in the current level of Management Fee, shall be subject to giving a **X days prior** notice to the Unit Holders upon approval of seventy-five (75%) percent or more unit holders, in terms of value of the Private Fund and submit the updated Private Placement Memorandum to Commission and trustee within fifteen days of such change.

In respect of any period other than Annual Accounting Period, such remuneration shall be prorated on the basis of the actual number of days for which such remuneration has accrued in proportion to the total number of days in the Annual Accounting Period concerned.

## Performance Fee

Performance fee of **X%** will be distributable to the Private Fund Management Company only after a full return to the Eligible Investors of their Contributed capital and Preferred Return of **X%** compounded annually as mentioned in the clause 14.4.

## Trustee Fee

The Trustee shall be entitled to a quarterly/half yearly/Annual remuneration out of the Trust Property. The remuneration shall begin to accrue from the First Closing. The Trustee shall, bear all expenses in relation to their respective professional management services in accordance with the provisions of the Constitutive Documents. Trustee fee will be calculated as follows:

1. For Net Assets up to PKR 1 billion: PKR **X Million** or **X%** per annum of Net Assets whichever is higher.
2. For Net Assets above PKR 1 billion: PKR **X million** plus **X%** per annum of Net Assets on amount exceeding PKR 1 billion

## SECP Annual Fee

The Private Fund Management Company shall, within three (3) months of the close of its Financial Year pay an annual fee to the SECP at the rate of PKR 250,000 (or as amended by the SECP) per annum as specified in the Regulations,2015 and such fee shall be chargeable to the Private Fund as an expense.

## Remuneration of Distribution / Investment Agent/ Investment Facilitator.

**(In case Investment Facilitator/Investment Advisor/Sales Agent appointed by PFMC)**

The distribution company/investment facilitator/investment advisor /sales agent employed by the Private Fund Management Company will be entitle to a remuneration payable by the Private Fund on terms to be agreed between the Private Fund Management Company and company investment facilitator/investment advisor /sales agent.

The Distribution company/investment facilitator/investment advisor /sales agent located outside Pakistan may, if so authorized by Private Fund Management Company be entitle to remuneration from the Private Fund on terms to be agreed between them and the Private Fund Management Company subject to the law for the time being in force.

## Private Fund Raising /Investor Acquisition Expenses

The allocation of expenses related to fund raising and client acquisition activities including travelling, client entertainment, etc. incurred by Private Fund Management Company and/or Joint Venture Partner / Service Provider (if any) up to maximum **X% p.a**. of trailing Net Assets chargeable directly to the Private Fund as per the legal service agreement signed between the Private Fund Management Company and joint Venture/Service Provider.

## Other Charges and Expenses

Other Expenses to be borne by the Private Fund include, but are not limited to, the following:

1. Expenses of preparing, amending, printing, and distributing reports, notices, other communications to Unit holders and government agencies;
2. All fees and expenses reasonably incurred in external due diligence including but not limited to legal, financial, technical and market advice;
3. Quotation or valuation expenses;
4. Profit and fees on any financing by the Private Fund and Bank charges;
5. Legal and professional fees (including, without limitation, expenses of consultants, experts and specialists);
6. Accounting and auditing expenses;
7. All expenses incurred by the Trustee in effecting the registration of all registerable property in the Trustee’s name;
8. Fees and expenses of any sub custodian, transfer agent, and registrar, and any other agent of the Private Fund;
9. All costs and expenses incurred as a result of dissolution, winding-up and termination of the Private Fund;
10. Charges and levies of stock exchanges, National Clearing Company and CDC charges;
11. Legal and related costs incurred in protecting or enhancing the interest of the Unit Holders;
12. All indemnities and other expenses related to litigation or other claims against the Private Fund;
13. Any amount which the Shariah Advisor may declare to be Haram and to be paid to Approved Charity Institution;
14. Shariah Advisory Fee;
15. Taxes, fees, duties, if any, applicable to the Private Fund and on its income, turnover and/or its properties including the Sales Tax levied on services offered by the Private Fund Management Company (for management of Private Fund), third party advisors and the Trustee for its services;
16. Other service charges include out of pocket expenses, taxes, fees, duties and other charges directly related to or associated with the Private Fund from time to time in excess of those already covered.

## Private Fund Management Company’s Expense

The Private Fund Management Company will be responsible for providing and paying for all office personnel, employee benefits, travel expenses of employees of the Private Fund Management Company and its affiliates, office space and office facilities required for the performance of its services to the Private Fund.

The Private Fund Management Company will not be responsible for fees and expenses of the Trustee or advisors appointed by the Private Fund or the fees and expenses of any legal advisors, auditors, external advisors or other service providers appointed by the Private Fund Management Company or Trustee solely for the purposes and benefit of the Private Fund, or for the purpose of compliance with the Rules and Regulations, 2015 and Regulation,2008 or for any expenses incurred in conducting investment transactions.

Such expenses shall include any and all taxes, stamp duty, commissions and registration fees and legal fees associated with the Trust Property and the Private Fund or otherwise imposed on the Private Fund Management Company in connection with the provision of its services relating to the Private Fund. All such costs shall be borne out of the Private Fund.

# DISCLOSURES, RECORDS AND REPORTING TO THE UNIT HOLDERS

## Periodic Reporting to Unit Holders

The Private Fund Management Company will disclose the following information on half yearly basis to the Eligible Investors;

1. Detail and composition of portfolio including value and description of the portfolio, value of each security held in the portfolio and cash balances as on the date of report;
2. Details of expense charged and expense ratio including Management fee, Trustee fee, formation cost, Auditor fee, brokerage commission, bank charges, other charges etc.; as per the Constitutive Documents;
3. Details of benefit received during that period including profit, dividend, bonus units; and
4. Performance review

## Financial Reporting

The Private Fund Management Company within four (4) months of close of the financial year of the Private Fund, will prepare as per the approved applicable International Accounting Standards (IAS) and International Financial Reporting Standards (IFRS), and transmit to the Unit Holders and the Commission, with respect to the Private Fund:

1. The balance sheet stating details of investments depicting cost and realizable value of such investments;
2. Profit and loss statement;
3. Cash flow statement; and
4. Statement of movement in NAV per Unit of the private fund

The Private Fund Management Company will also provide unaudited financial information for the fund on a quarterly basis for informational purpose only.

## Account Statements

The Private Fund Management Company shall send an investment account statement to each Unit Holder on the registered mailing address (or email address) provided by the Unit Holder at least once in a year and each time when there is a transaction in the account. The Unit Holders will be entitled to request for copies of their account statement on any Dealing Day within Business Hours by applying to the Private Fund Management Company in writing and providing such fee to the Private Fund Management Company as may be notified from time to time, and such copies will be sent to the Unit Holders within (07) seven Dealing days.

The Private Fund Management Company/Transfer Agent shall provide an account balance and/or account activities statement through electronic mode to all Unit Holders who have opted for such service on a half yearly basis or at least once annually to all unit holders.

## Accounting Period

Accounting Period means a period ending on and including an accounting date and commencing (in case of the first such period) on the date on which the Trust Property is first paid or transferred to the Trustee and (in any other case) from the next day of the preceding Accounting Period. Annual Accounting Period can mean the twelve months period commencing either on \_\_ and ending on \_\_ of the succeeding calendar year.

## Trustee Report

The Trustee's report to the Unit Holders shall be included in the Annual Report, and shall state whether in the opinion of the Trustee, the Private Fund Management Company has in all material respects managed the Private Fund in accordance with the provisions of the Regulations 2015 and Regulations 2008, the Rules and the Constitutive Documents and if the Private Fund Management Company has not done so and the steps the Trustee has taken in respect thereof.

## Record Maintenance

The Private Fund Management Company will maintain the books of accounts and other records of the Private Fund at least for ten (10) years which will include complete records reflecting an accurate view of the financial position of the Private Fund, the income and expenditure of the Private Fund, all transactions executed for the account of the Private Fund, amounts received by the Private Fund in respect of issue of Units and any distributions and payments made out of the Private Fund / at the termination of the Private Fund.

The Private Fund Management Company shall maintain a Register of Unit holders by itself or appoint a Registrar. Provided that the Private Fund Management Company may itself also act as the Registrar. The Private Fund Management Company may remove and/or replace the Registrar, under intimation to the Trustee.

# INVESTMENT RISKS

**(This list of risks mentioned below are not exhaustive and can include relevant risks other than the ones mentioned below).**

## Specific Risks

## Unavailability of Trading Platform

Private funds are not mutual funds. The Private Fund either a closed-end Private Fund/open-end Private Fund are designed primarily for long-term Investors and are not intended to be a trading vehicle. An Investor should not invest in the Private Fund if the Investor needs a liquid investment. Close-end Private Funds have a finite term whereas Open-end Private Funds have an infinite term. Investors in both a closed-end Private fund or open-end private fund do not have the right to redeem their units on a daily basis at a price based on NAV.

## No Guaranteed Return or Distributions

The Private Fund's performance can be volatile and cannot guarantee return of Investors' capital contributions. There can be no assurances that the Private Fund will achieve the rates of return illustrated at any point.

## Taxation Risk

The investors of the Private funds will be subject to double taxation layer. The first layer of taxation applies to the dividend distribution from a Private Fund out of its income and 2nd layer applies to each individual unit holder's income out of those distributed funds. Hence, a private fund unit holder ends up paying double tax.

## Idle Funds

While the Private Fund Management Company will endeavor to keep the Fund’s assets invested, there may be periods of time before and after an investment position is taken when the Company has a significant portion of its assets in other liquid investments. The investment return on such “idle funds” is not expected to meet the overall return objective the Private Fund Management Company seeks.

## Liquidity Risk

Investments in the Private Fund requires a long-term commitment, with no certainty on returns. The Private Fund does not expect to generate cash flow to the Unit holders in the near term. Most of the investments would be highly illiquid and there can be no assurance that the Private Fund would be able to realize on such investments in a timely manner. Currently, there is no public market for the Units.

## Business Risks

Investments of the Private Fund will consist primarily of securities issued by the entities that are privately owned/publicly (in case of Alternative Funds) owned. Operating results of such entities will be difficult to predict. Such investments involve a high degree of business and financial risk that can result in substantial losses.

## Equity Risk

Companies issue equities or stocks to help finance their operations and future growth. The Companies’ performance outlook, market activity and the larger economic picture influence the price of equity. Usually when the economy is expanding, the outlook for many companies is good and the equity prices may rise and vice versa.

## Events Risk

There may be adjustments to the performance of the Private Fund due to events including but not limited to a natural calamity, market disruption, mergers, nationalization, insolvency and changes in tax law etc.

## Valuation Risks and Conflicts

Certain investments in which the Private Fund may directly or indirectly hold and certain of the Private Fund's liabilities may not have a readily ascertainable market value and may be valued by the Private Fund Management Company or any Independent Valuer in accordance with its established valuation policies. The valuation of such assets and liabilities may rely on quoted prices in inactive markets or models that have observable inputs. Certain other categories of assets may lack any readily available market information and, accordingly, the valuation of such assets may rely substantially on models and significant unobservable inputs including assumptions from market participants. As such assets are not actively traded, their value can only be estimated using a combination of mathematical models and subjective assumptions.

## Dependence on Third Party Relationships

The Private Fund is generally dependent on relationships with third parties including tax advisers, law firms, accounting and audit firms etc. There can be no assurance that such third parties may regard their relationship with the Private Fund Management Company as important to their own business and operations. Accordingly, there can be no assurance that the Private Fund Management company’s existing relationships or future relationships will result in sustained business partnerships, successful service offerings, or significant revenues for the Private Fund.

## Concentration of Investments

There are no limitations imposed by the Private Fund Management Company as to the amount of assets that may be invested in (i) any one Investee company, (ii) indirectly in any single industry or (iii) in any Private Fund. In addition, a Private Fund’s investment portfolio may consist of a limited number of companies and may be concentrated in a particular industry area or group. Accordingly, the Private Fund’s investment portfolio may at times be significantly concentrated, both as to industries and individual companies. Such concentration could offer a greater potential for capital appreciation as well as increased risk of loss. Such concentration may also be expected to increase the volatility of the Private Fund’s investment portfolio.

## Risks Relating to Distributions.

Where a Private Fund makes distributions to Unit holders, such distributions are at the absolute discretion of the Private Fund Management Company and are not guaranteed. The amount of actual distributions that a Private Fund may pay, if any, is uncertain. Distributions may be made from profit and capital gains derived from the investments of the Private Fund. Profits may be adversely affected by events (but not limited to) investee company suffering unexpected losses and/or paying lower than expected dividends, and adverse currency exchange rate fluctuations etc. Investors should note that the declaration and/or payment of distributions (whether out of profit, capital gains, capital or otherwise) may have the effect of lowering the net asset value of the Private Fund.

## Increases in Operating and Other Expenses

The Private Fund’s operating and other expenses could increase without a corresponding increase in turnover or reimbursements of operating and other costs. Factors that may increase operating and other expenses include (i) increases in the rate of inflation (ii) increases in regulatory charges (iii) changes in laws, Regulations, 2015 or government policies which could increase the costs of compliance with such laws, Regulations, 2015 or policies.

## Third-Party Litigation.

A Private Fund’s investment portfolio is subject to the normal risks of becoming involved in litigation by third parties. Existing investors in a portfolio of investments may bring lawsuits against the Private Fund, particularly in situations where existing investors in such portfolio of investments are adversely affected by the Private Fund’s participation in such portfolio of investments. The expense of defending against claims by third parties and paying any amount pursuant to settlements or judgments would generally be borne by such portfolio of investments (and would reduce net assets) and indirectly, by the Private Fund.

## Taxation

The Private Fund will be structured in a manner that is tax efficient. However, there can be no assurance that such structure will be tax efficient in general or for any particular investor or that any particular result will be achieved. In general, tax laws, treaties and Regulations, 2015 are extremely complex and are subject to changes on a frequent basis, which in some cases may reduce existing tax benefits, and may also have a retroactive effect. Accordingly, each potential investor is urged to consult his, her or its own tax advisor regarding the applicability, effects and implications of the various tax laws with respect to such investors.

## Exit Strategies.

A number of factors may complicate exit strategies pursued by the Private Fund and portfolio of investments.

## Small Companies

(Not Applicable in case of Alternative Fund)

There is no limitation on the size of the companies in which the Private Fund may invest. Some small or mid cap companies (listed and unlisted) in which the Private Fund may invest may be speculative, lack management depth or the ability to generate internally or obtain externally the funds necessary for growth. Companies with new products or services could sustain significant losses if projected markets do not materialize. Further, such companies may have, or may develop, only a regional market for products or services and may be adversely affected by purely local events. Such companies may be small factors in their industries and may face intense competition from larger companies and entail a greater risk than investment in larger companies.

## Due Diligence Risk

Although the Investment Committee will endeavor to adopt a detailed and exhaustive internal and external due diligence process, the Private Fund can face losses due to items that were not identified during the process.

## Shariah non-compliance Risk

The risk associated with employing funds in investments that are not consistent with the principles of shariah.

## General Risks

## Credit Risk

Credit Risk comprises default risk and credit spread risk. Each can have negative impact on the value of the income and investments held by the Private Fund.

## Default Risk

The risk that the issuer of the investee security will be not be able to pay the obligation either on time or in all.

## Political and Regulation Risk

Investments made by the Private Fund may be subject to changing political environments, regulatory restrictions and changes in government institutions and policies, any of which could adversely affect such private investments.

## Economic Risk

## Economic risk refers to the likelihood that macroeconomic conditions may affect the investment. Growth rate of gross domestic product, the rate of inflation, capital reinvestment, resource self-sufficiency or balance of payments could adversely affect the Private Fund’s performance in a deteriorating macroeconomic environment.

## Foreign Currency and Exchange Rate Risk

The foreign currency risk is prevalent in investments placed outside Pakistan. The foreign investments may be affected due to foreign government actions, political instability, transaction exposure or any other factors affecting international forex market.

## Leverage Risk and Financial Risk

Investments of the Private Fund may be leveraged by financing entities in which the Private fund has invested. Such leveraging although potentially providing enhanced returns to the Private Fund can substantially increase the risk of loss for the Private Fund including in that loans to an entity would typically rank in priority or other decisions on behalf of the Private Fund or have any role in transaction for the Private Fund.

## Market risk

Market risk is the risk of losses on investments held in the portfolio caused by adverse price movements.

## Redemption Risk

Some of the underlying investments of the Private Fund are not actively traded, the Unit Holders may face difficulties in redeeming their investments;

## Price risk

The price risk is defined as when the NAV of the fund increases or decreases due to its holdings in such securities as a result of other factors. **(Please provide risk arising due to any variation in key underlying assumptions and their quantifiable impact (This should cover sensitivity and worst-case scenario analysis) on the NAV).**

## Inflation

Pakistan has experienced extremely high rates of inflation for many years. Inflation and rapid fluctuations in inflation rates have had and may continue to have negative effects on the economies and securities markets. Therefore, the performance of the Private Fund could be affected by rates of inflation.

## Pandemic & Health Risk

The occurrence of a pandemic outbreak, such as a viral or bacterial infectious disease with global reach, may have adverse consequences for underlying portfolio investments of the Private Fund and the value of the Private Fund’s investments therein, the operations of the Private Fund Management Company and the Private Fund. Any of such pandemic outbreak events could materially and adversely affect the Private Fund’s ability to source, manage and divest its investments and its ability to fulfil its investment objectives.

# Taxation/Zakat on Private Fund

## Taxation on the Income of the Private Fund

The following is a brief description of the Income Tax Ordinance, 2001, applicable in respect of the Private Fund. Under the Tax Law in Pakistan, the definition of a public company includes a trust formed under any law for the time being in force. The Private Fund will taxed at the rate applicable to a public company:

The income of the Private Fund will accordingly be taxed at the following rates

1. Dividend income as applicable according to the relevant law.
2. Capital Gain Tax as applicable according to the relevant law.
3. Return from all other sources / instruments are taxable at the rate applicable to public company

**Please provide reference of any exemption the Private Fund is seeking along with the name of the auditor providing opinion on such exemption.**

## Withholding tax

The Private Fund’s income from dividend, deposits with banks, financial institutions, commission and brokerage and capital Gains on disposal of securities will be subject to withholding tax as per Income Tax Ordinance (ITO), 2001.

## Zakat on Private Fund

The Private Fund is Saheb-e-Nisab under the Zakat and Ushr Ordinance, 1980. The balance in Islamic banks account, Islamic Banking Window of Commercial Bank Account, or similar account with a bank standing on the first day of Ramzan-ul-Mubarak will be subject to Zakat deduction @ 2.5%.

## Tax implications on High-Net-Worth Individuals and Institutional Investors

## Dividend received from a Private Equity and Venture Capital Fund and Alternative Fund

Tax rate on Mutual fund entity and REIT (charged and withheld) as provide in Income Tax Ordinance (ITO), 2001 will also be applicable on dividend received from Private Equity and Venture Capital and Alternative Fund. However, if some tax liability is discharged, by way of minimum taxes, then enhanced rate of tax would not apply and distributions out of Private Equity and Venture Capital Fund or Alternative Fund would also be subject to tax at the rate of 15%.

## Capital gains on disposal of units

As the Private Fund is registered as a Trust under the Trusts Act, 2020 and as a Company under the Companies Act 2017, capital gains earned on disposal of units of Private Equity and Venture Capital Fund / Alternative Fund would therefore be subject to tax as a separate block at the applicable rate as per Income Tax Ordinance (ITO), 2001.

## Tax implications on International Investors

The tax implications would vary on case-to-case basis depending on the tax residency of the Investor. To determine the tax implications, bilateral treaty which Pakistan has executed with various countries would need to be examined to check how the taxing rights of capital gains are shared between the two countries. Multilateral convention to implement tax treaty related measures to prevent base erosion and profit shifting (MLI) may also have certain implications depending on the choices of various countries to adopt certain provisions within MLI.

## Zakat on Investors

Units held by resident Pakistani Unit Holders shall be subject to Zakat at 2.5% of the value of the Units under Zakat and Ushr Ordinance, 1980, (XVII of 1980), except those exempted under the said Ordinance. Zakat will be deducted at source from the redemption proceeds. Above deduction will not be made if Unit Holder provides declaration in due course of time to the Management Company.

## Disclaimer

The tax and Zakat information given above is based on the Private Fund Management Company’s tax advisor’s interpretation of the law which, to the best of the Private Fund Management’s Company understanding is correct. Investors are expected to seek, independent advice so as to determine the tax consequences arising from their investment in the units of the Private Fund. Furthermore, tax and Zakat laws, including rates of taxation and of withholding vtax, are subject to amendments from time to time. Any such amendments in future shall be deemed to have been incorporated herein.

# THE TRUSTEE – NAME OF TRUSTEE

## Details of the Trustee

The Trustee of the Private Fund is **Name of Trustee** having its registered office at **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.**

The Trustee is required to perform the role of Trustee is specified by Applicable Laws, the Trust Deed and this Private Placement Memorandum.

The Trustee shall perform all the obligations entrusted to it and discharge all its duties in accordance with the Applicable laws, the Trust Deed and this Private Placement Memorandum. Such duties may also be performed on behalf of the Trustees by any officer or responsible official of the Trustee or by any nominee or agent appointed by the Trustee under intimation to the Private Fund Management Company. Provided that the Trustee shall be responsible for the willful acts and omissions and shall account to the Trust for any loss in value of the Private Fund property where such loss has been caused by negligence or any reckless willful act or omission of the Trustee or any of its attorney (ies), or agents.

## Duties, Powers, Rights and Obligation of Trustee

## The Trustee shall perform its role, duties and obligations and have such powers and rights, as are specified in the Rules, Regulations, 2015 and regulations, 2008 and directives issued there under, Trust Deed and this Private Placement Memorandum.

## In addition, the Trustee shall have the following obligations with respect to the Private Fund, the Private Fund Management Company and/ or the Unit Holders as applicable:

1. take under its control all the property of the Private Fund and hold it for the Unit Holders in accordance with the Rules, Regulations, 2015 and Regulations, 2008 and the provisions of the Constitutive Documents. Any cash and registerable assets shall be registered in the name of, or to the order of, the Trustee in case of trust;
2. ensure that the sale, purchase, issue and transfer of Units effected by a Private Fund are carried out in accordance with the provisions of the Constitutive Documents;
3. carry out the instructions of the Private Fund Management Company, in respect of investments unless these are in conflict with the provisions of these Regulations, 2015 and Regulations, 2008 or the Constitutive Documents;
4. issue a report to be included in the annual report of the Private Fund and therein state whether, in its opinion, the Private Fund Management Company has in all material respects managed the Private Fund in accordance with the provisions of the Constitutive Documents, the Rules and Regulations,2015 and Regulations, 2008 and if the Private Fund Management Company has not done so, the respects in which it has not done so and the steps that the Trustee has taken in respect thereof;
5. not legally or beneficially own or invest in the Units of the Private Fund;
6. obtain and maintain duplicate of all the records of register of Unit Holders maintained by the Private Fund Management Company or the Registrar and shall update the record on a regular basis;
7. in the event of any loss caused due to any gross negligence or willful act and/or omission, the Trustee shall have an obligation to replace the lost investment forthwith with similar investment of the same class and issue together with all rights and privileges pertaining thereto or compensate the Trust to the extent of such loss. However, the trustee shall not be under any liability thereof or thereby and it shall not incur any liability by reason of any error of law or any matter or thing done or suffered or omitted to be done in good faith hereunder; and
8. comply with any directions of the Commission given in the interest of the Unit Holders.

## The Trustee shall nominate one or more of its officers to act as authorized persons for performing the Trustee’s functions and for interacting with the Private Fund Management Company. Any change in such authorized persons shall be promptly notified in advance to the Private Fund Management Company.

## The Trustee shall on the direction of the Private Fund Management Company appoint, remove or replace from time to time one or more bank(s) and/or other depository company(ies) etc. to act as the Custodian(s) for holding and protecting the Trust Property and every part thereof and for generally performing the custodial services at one or more locations and on such terms as the Trustee and the Private Fund Management Company may mutually agree to be incorporated in custodial services agreement(s) to be entered into between the Trustee and the Custodian(s), except where the Trustee itself is acting as a Custodian. Notwithstanding appointment of any other entity to act as Custodian for any of the Trust Property, the Trustee shall continue to remain responsible for performance of its function and obligations under this Deed, Constitutive Documents and Applicable Law.

## Except as otherwise provided in the Constitutive Documents or Applicable Law, the Trustee shall not be under any liability on account of anything done or suffered by the Trust, if the Trustee had acted in good faith in performance of its duties under the Deed or in accordance with or pursuant to any request of the Private Fund Management Company provided it is not in conflict with the provisions of this Deed or the Rules, Regulations, 2015 and Regulations, 2008. Whenever pursuant to any provision of this Deed, any instruction, certificate, notice, direction or other communication is required to be given by the Private Fund Management Company, the Trustee may accept as sufficient evidence thereof:

1. a document signed or purporting to be signed on behalf of the Private Fund Management Company by any authorized representative(s) whose signature, the Trustee is for the time being authorized in writing by the Private Fund Management Company to accept; and
2. any instructions received online through the software solution adopted by the Private Fund Management Company/Trustee in consultation with each other shall be deemed to be instructions from the authorized representative(s).

## The Trustee shall not be liable for any loss caused to the Private Fund or to the value of the Trust Property directly caused by Force Majeure;

## The Trustee shall make available or ensure that there is made available to the Private Fund Management Company such information as the Private Fund Management Company may reasonably require from time to time in respect of the Trust Property and all other matters relating to the Trust.

## The Trustee shall, if requested by Private Fund Management Company or if it considers necessary for the protection of Trust Property or safeguarding the interest of Unit Holder(s) subject to obtaining prior written consent of Private Fund Management Company institute or defend any suit, proceeding, arbitration or inquiry or any corporate or shareholders’ action in respect of the Trust Property or any part thereof, with such powers as may be authorized by the Private Fund Management Company to sign, swear, verify and submit pleadings and affidavits, to file documents, to give evidence, to appoint and remove counsel and to do all incidental acts, things and deeds through the Trustee’s authorized director(s) and officer(). All costs, charges and expenses (including legal fees) incurred in instituting or defending any such action shall be borne by the Trust and the Trustee shall be indemnified against all such costs, charges and expenses, provided that no such indemnity shall be available in respect of any action taken against the Trustee in connection with the Trustee’s gross negligence or breach of its duties in connection with the Trust. For the avoidance of doubt it is clarified that notwithstanding anything contained in this Deed, the Trustee and the Private Fund Management Company shall not be liable in respect of any losses, claims, damages or other liabilities whatsoever suffered or incurred by the Trust arising from or consequent to any such suit, proceeding, arbitration or inquiry or corporate or shareholders’ action or otherwise howsoever and (save as herein otherwise provided) all such losses, claims, damages and other liabilities shall be borne by the Trust.

## The Trustee shall promptly forward to the Private Fund Management Company within one Business Day any notices, reports or other documents issued by the issuers of securities, recipients of any of the Trust Property (as deposits, refunds, distribution of dividends, income, profits, repayment of capital or for any other reason), any depository, an intermediary or agent in any transaction or from any court, government, regulator, stock exchange or any other exchange.

## The Trustee shall call a meeting of the Unit Holders through notice to the Unit Holders whenever required as per the following mechanism:

1. For all matters relating to the Private Fund, a meeting of the Unit Holders shall be convened by the Trustee upon the request of: (i) the PFMC; or (ii) Unit Holders owning or entitled to own at least X% of Fund Units.
2. Disclose the modes through which the Unit Holder meetings will be held e.g. video-link communication by which all Unit Holders participating and constituting a quorum.
3. Disclose the quorum which will constitute a valid meeting for agendas other than change in fundamental attributes of the Private Fund/Alternative Fund. In case of an agenda on changing fundamental attributes of a Private Fund/Alternative Fund, a quorum of at least 75% is needed to constitute a valid meeting.
4. Disclose the mechanism of serving notice of a proposed meeting to the Unit Holders.
5. Disclose the percentage of Unit Holders required for a decision to be adopted. In case of meeting resolution related to changing fundamental attributes of a Private Fund/Alternative Fund, approval of 75% or more Unit Holders is needed as per Regulations, 2015.
6. Disclose the other details of Unit Holder meeting, its documentation, communication and reporting of the minutes of the meeting to the Unit Holders and PFMC.

## Duties of the Trustee which may be delegated to the Third Parties

The Trustee may appoint any third party to act as agent of the Trustee for holding and protecting Trust property and every part thereof and for generally performing the custodial services at one or more locations and on such terms as the Trustee and the Private Fund Management Company may mutually agree to be incorporated in custodial services agreement(s). Notwithstanding appointment of any other entity to act as agent of the Trustee for any of the Trust Property, the Trustee shall continue to remain responsible for performance of its function and obligations under this Deed, Constitutive Documents and Applicable Law.

## Remuneration of Trustee and Its Agents

The Trustee shall be entitled to a quarterly remuneration out of the Trust Property determined in accordance with the Trust Deed (Annexure C). The remuneration shall begin to accrue from the First Closing. Such remuneration shall be paid to the Trustee quarterly.

In consideration of the foregoing and save as aforesaid the Trustee shall be responsible for the payment of all expenses incurred by the Trustee from time to time in connection with its duties as Trustee of the Private Fund. The Trustee shall not make any charge against the Unit Holders or against the Trust Property or against the Distribution Account for their services or for their expenses, except such expenses as are expressly authorized to be paid out of the Trust Property under the provisions of the Regulations, 2015 and the Constitutive Documents.

Any increase in the remuneration of the Trustee will be on mutually agreed basis with Private Fund Management Company and such agreement shall be recorded in writing.

# AUDITOR OF THE PRIVATE FUND

The first independent Auditor of the Private Fund is:

1. the Auditor who will hold office until the transmission of the reports and accounts, which will cover the period from commencement of the Private Fund up to the end of the accounting period of the Private Fund and will, afterwards, be eligible for reappointment by the Private Fund Management Company with the concurrence of the Trustee. However, an Auditor may be re-appointed for such terms as stipulated by Applicable Laws as amended from time to time. The appointment of Auditor and contents of the Auditor’s report shall be in accordance with the provisions of Applicable Laws.
2. the Auditor shall have access to the books, papers, accounts, and vouchers of the Private Fund, whether kept at the office of the Private Fund Management Company, Trustee, a custodian, transfer agent or elsewhere and shall be entitled to require from the Private Fund Management Company, Trustees and their Directors, officers and duly authorized agents and representatives such information and explanations as considered necessary for the performance of audit.
3. the Trustee shall be entitled to require the Auditor to provide such further reports as may be agreed between the Trustee and the Private Fund Management Company as may be considered necessary to facilitate the Trustee in issuing any certifications required under Applicable Laws.
4. The Auditor shall prepare a written report to the Unit Holders on the accounts and books of accounts of the Trust and the balance sheet, profit and loss account, cash flow statement and statement of movement in Unit Holders’ Fund and on every other document forming part of the balance sheet and profit and loss account, including notes, statements or schedules appended thereto in accordance with Applicable Law. The report of the Auditors shall state:

* Whether in the Auditor's opinion the accounts prepared for that period have been properly prepared in accordance with the relevant provisions of the Regulations, 2015;
* Statement to the effect that the Auditor has conducted audit of the Private Fund in accordance with the international standards on auditing as applicable in Pakistan;
* Without prejudice to the foregoing, whether in the Auditor's opinion, a true and fair view is given of the disposition of Private Fund at the end of the period and of the transactions of the Private Fund of the period;
* if the Auditor is of the opinion that proper books and records have not been kept by the Private Fund or the accounts prepared are not in agreement with the books and records of the Private Fund, that fact; and
* if the Auditor has failed to obtain all the information and explanations which, to the best of his knowledge and belief, are necessary for the purpose of the audit.

# BANKERS

Bankers to the Private Fund shall be any bank **(must be Shariah compliant/ Islamic banks and Shariah compliant/ Islamic banks window for Shariah Compliant Private Fund**) appointed by the Private Fund Management Company. The Trustee shall maintain and operate the Bank Accounts of the Private Fund at the said Bank(s).

## Bank Accounts

1. The Trustee, at the request of the Private Fund Management Company, shall open Bank Account(s) titled **“Trustee-Trustee name of Private Fund”** for the Unit Trust at designated Islamic Bank(s)/ Islamic Window of Conventional Banks inside or outside Pakistan, subject to the relevant laws, Trust Deed, Rules, Regulations 2015 and Regulations 2008 for collection, investment, redemption or any other use of the Trust’s Funds.
2. The Private Fund Management Company may also require the Trustee to open Bank Account(s) as Distribution Account(s) for dividend distribution out of the Unit Trust. Notwithstanding anything in the Trust Deed, the beneficial ownership of the balances in the Accounts shall vest in the Unit Holders.
3. All bank charges for opening and maintaining Bank Accounts for the Trust shall be charged to the Private fund.
4. All income, profit etc., earned in the Distribution Account(s), including those accruing on unclaimed dividends, shall form part of the Trust Property for the benefit of the Unit Holders and shall be transferred periodically from the Distribution Account(s) to the main Bank Account of the Trust.

# SHARIAH GOVERNANCE (only applicable to shariah compliant Private Fund)

All activities of the Private Fund shall be undertaken in accordance with the Shariah Guidelines provided by the Shariah Advisor or Shariah Regulatory Provisions of SECP issued from time to time. The Private Fund Management Company has appointed a Shariah Advisor who shall advise the Private Fund Management Company on matters relating to Shariah Compliance.

The Shariah Advisor shall be appointed for a period mutually agreed between the Private Fund Management Company and such Shariah Advisor and may be re-appointed on completion of his term. The Private Fund Management Company may terminate its agreement with the Shariah Advisor and appoint a new Shariah Advisor under intimation to the Trustee and SECP. Provided that till the appointment of new Shariah Adviser, the existing Shariah Adviser shall continue to perform his duties. Provided further that the Private Fund Management Company shall inform the Commission at least 15 days in advance for change in the Shariah Advisor.

## Duties and Responsibilities of Shariah Advisor

The Shariah Advisor Shall:

1. provide technical guidance and support on various aspect of Shariah so as to enable the Private Fund Management Company to operate the Fund as a Shariah Complaint Private Fund.
2. recommend general investment guidelines consistent with the Shariah. Any verdict issued by the Shariah Advisor in respect of any Shariah related matter shall be final and acceptable to the Trustee, the Private Fund Management Company, the Unit Holders and other parties related with that matter.
3. at the end of Annual Accounting Period, issue a certificate, to be included in the Private Fund`s financial reports, in respect of Shariah Compliance of the preceding year`s operation of the Private Fund and the Shariah Advisor may, at the expense of the Private Fund, conduct such audit or other investigation as may be necessary for the issuance of the certificate.
4. co-ordinate with the Private Fund Management Company in drawing up of the Trust Deed and other related material documents including Constitutive Documents for the formation of the Unit Trust
5. perform the research as appropriate for the purpose of screening of investments. The Shariah Advisor will then decide as to which criteria are relevant to be used in the context of relevant markets and the instruments as per investment strategy of the private Fud, and which need to be modified/added/deleted and also decide the methodology for calculation of Haram Income
6. certify that all the provisions of the Constitutive Documents of the Private Fund and proposed investments to be made on account of the Private Fund are Shariah compliant with the established criteria.
7. determine percentage of income and cash flows included in the income and cash flows of the companies in which the Private Fund has invested from activities not in accordance with the principles of the Shariah, and recommend to the Private Fund Management Company the criteria for selecting the registered charitable institutions as per shariah advisor guidelines under relevant Pakistani laws to whom such sums shall be donated.

## Shariah Screening Criteria

Disclose Shariah screening criteria of the Private Fund as per Shariah Governance Regulations, 2018.

## Shariah Advisor (Internal) – Name of Advisor

Disclose the profile of the internal Shariah Advisor

## Shariah Advisor (External) – Name of Advisor

Disclose the profile of the internal Shariah Advisor

# OTHER ADVISORS AND AGENTS

## Role of the Advisory Board

Disclose the role and other details of the advisory board.

## Legal and Professional Advisory

Disclose the role and other details of the legal and professional advisory.

## Registrar or Transfer Agent

Disclose the role and other details of the registrar and transfer Agent.

## Other advisor/consultant/Industry expert

Disclose profile and details of any other advisor/consultant/industry expert appointed by PFMC for the Private Fund.

# Change of the Private Fund Management Company

## The Private Fund Management Company may be changed on the occurrence of any of the following:

1. The Private Fund Management Company goes into liquidation (other than voluntary liquidation on terms previously agreed to with the Trustee for purpose of reconstruction and amalgamation), or its license is cancelled;
2. A receiver is appointed over all or substantially all of the assets of the Private Fund Management Company.

## The Private Fund Management Company, may with the approval of Unit Holders representing 75% or more of the value of the Private Fund, voluntarily retire at any time with prior written intimation to the SECP and at least ninety days prior notice to the Trustee. The exiting Private Fund Management Company shall appoint another Private Fund Management Company for the Private Fund in accordance with the Regulations, 2015 and other Applicable Laws. Provided that no retirement of the Private Fund Management Company shall become effective until the appointment of another Private Fund Management company (the “Successor Private Fund Management Company”) licensed by the SECP in accordance with the Regulations,2015 and execution of a supplemental Trust Deed in the name of the Successor Private Fund Management Company.

## Provided that the removal or retirement of the Private Fund Management Company shall not become effective until the Private Fund Management Company has utilized all its legal remedies and received its remuneration as described in the section of this Private Placement Memorandum titled Remuneration of the Private Fund Management Company. Furthermore, the Distribution of Income and Capital provision set out in the Term Sheet in Annexure 1 of the Private Placement Memorandum will survive any such removal/retirement and transfer.

## Upon appointment of the successor Private Fund Management Company, the Private Fund Management Company will take immediate steps to hand over all the documents and records pertaining to the Private Fund to the successor Private Fund Management Company and shall pay all sums due to the Trustee. The Private Fund Management Company shall have the right to receive its remuneration up to the effective date of removal or retirement, i.e., up to the expiry of the ninety days’ notice period.

## Furthermore, the Trustee may immediately in case of change of Private Fund Management Company appoint auditors who shall be qualified chartered accountants in Pakistan and have received satisfactory rating under the Quality Control Review (QCR) Program of the Institute of Chartered Accountants of Pakistan. The Trustee shall ensure that accounts of the Private Fund till the day of the appointment of the new Private Fund Management Company are audited by such Auditor.

## The auditors so appointed may be other than the existing auditors of the Private Fund, the Private Fund Management Company and the Trustee.

## Upon appointment of the successor Private Fund Management Company shall exercise all the powers and enjoy all the rights and shall be subject to all duties and obligation of the Private Fund Management Company hereunder as fully as though such new Private Fund Management Company had originally been a party hereto.

## The Trustee shall ensure that accounts of the Private Fund till the day of the appointment of new Private Fund Management Company are audited by the Auditor.

## The Auditors shall have the same scope as that for the annual audit as set out in the Regulations, 2015, or such other enhanced scope as may be specified by the Trustee or the SECP.

## The Auditors Report shall be submitted by the Auditors to the Trustee not later than thirty Business Days from the appointment. A copy of the report shall also be provided to the SECP, the Private Fund Management Company and the Successor Fund Management Company.

## The cost of such audit shall be borne by the Private Fund.

## Remuneration of the Private Fund Management Company and its Agents

## The Private Fund Management Company shall be entitled to prescribe and receive remuneration up to the maximum rate of remuneration permitted under the Private Placement Memorandum (see 15.1.4 Management Fee).

## The remuneration shall in all cases be determined with reference to and shall begin to accrue from the mention period e.g. First closing date etc. as specified in Private Placement Memorandum / Term sheet, regardless of the date on which the Unit Holders make their contributions;

## Such remuneration shall be paid to the Private Fund Management Company in the manner specified in this Private Placement Memorandum:

## The fees payable to the Private Fund Management Company hereunder will supplement and will not be abated by any other remuneration receivable by the Private Fund Management Company or any associate of the Private Fund Management Company in connection with any transactions effected by the Private Fund Management Company for the benefit of or associated with the Private Fund or any investment transactions;

## Any increase in the management fees or remuneration of Private Fund Management Company shall be effective only after prior notice and approval of 75% of the Unit holders. However, any decrease in remuneration, agreed to by the Private Fund Management Company shall not require any prior notification or approval.

## The Private Fund Management Company may from time to time, in its absolute discretion, waive or rebate all or any part of its fees to any third party. Fees may be reduced or may not be payable on such Units as may be specified in the Private Placement Memorandum.

## In the event of any dispute as to the amounts payable to the Private Fund Management Company by the Private Fund or by the Trustee under this Trust Deed. The certificate of the Auditors of the Private Fund acting as experts shall be conclusive and binding, and the fees of the Auditors to act as experts in this regard shall be borne by the Private Fund.

# Retirement or Removal of Trustee

## The Trustee may, subject to the prior approval of the Commission, retire from his office on appointment of a new trustee and the retirement shall take effect at the same time as the new trustee is appointed with the approval of the Commission or from the date of assumption of Trust Property of the Fund by the newly appointed Trustee, whichever is later.

## In circumstances where the Commission is of the opinion that Trustee has been in violation of the Regulations, 2015 and Regulations, 2008 or this Trust Deed or found guilty of misconduct or failed to discharge its obligations under the Regulations,2015 and Regulations, 2008 it may remove the Trustee after giving an opportunity of being heard.

## The Private Fund Management Company may, giving cogent reasons, apply to the Commission for change of the Trustee by simultaneously proposing appointment of a new trustee. A new trustee shall be appointed when the Commission is satisfied with the circumstances and reasons for this change and accords approval for appointment of such a new trustee.

## Upon the appointment of a new trustee the Trustee shall immediately hand over all the documents and records to the new trustee and shall transfer all the Trust Property and any amount held in any Distribution Account to the new trustee and make payments to the new trustee of all sums due from the Trustee. The Trustee shall have the right to receive its remuneration up to the effective date of its removal or retirement.

## The new trustee shall exercise all the powers and enjoy all the rights and shall be subject to all duties and obligations of the Trustee hereunder as fully as though such new trustee had originally been a party hereto.

## The Private Fund Management Company may immediately in case of retirement or removal of Trustee appoint auditors with the consent of the Commission from amongst the panel of auditors from the SECP’s list of QCR approved Auditors issued vide circular no. 04 of 2023 dated April 03,2023. The Private Fund Management Company shall ensure that accounts of the Private Fund till the day of the appointment of the new trustee are audited by such Auditor.

## The Auditors so appointed shall be other than the existing Auditors of the Private Fund, the Private Fund Management Company and the Trustee.

## The Auditors shall have the scope as may be specified by the Private Fund Management Company or Commission.

## The audit report for the audit shall be submitted by the Auditors to the Private Fund Management Company not later than thirty (30) Business Days from their appointment. A copy of the report shall also be provided to the Commission, the Trustee and the new trustee.

## The costs of such audit shall be borne by the Private Fund.

# Revocation of Trust/Private Fund

## The Private Fund may be terminated / dissolved on the occurrence of any of the below events;

1. in the opinion of the Private Fund Management Company, the Private Fund is not commercially viable in order to be continued;
2. continuation of the Private Fund may jeopardize the interest of the Unit Holders;
3. it became impractical to continue the Private Fund in terms of its investments objectives and policies due to any amendments in laws;
4. size of the Private Fund has been reduced significantly due to a continuance of losses.
5. upon application to the SECP by three-fourth in value of the total Unit Holders of the Private Fund, or if in the opinion of the SECP, continuation of the Private Fund will be detrimental to the interest of the Unit Holders, the SECP may direct the Trustee to liquidate the Private Fund.
6. any other reason specified by the SECP pursuant to the Regulations, 2015.

## For clause (a, b, c, d) of clause 26.1.1, the Private Fund Management Company shall submit to the Trustee notice in writing specifying its intention of termination/revocation to the Trustee and the Unit Holders along with the reasons for the same.

## The Trustee shall, after assessing the reasons provided by the Private Fund Management Company, start termination/revocation by giving notices to the Unit Holders and SECP. All information related to the Private Fund shall be transferred to the Trustee who shall dispose of the Trust Property in consultation of Private Fund Management Company in the best interest of the Unit Holders.

## After notice of revocation of the Private Fund, all transfer of the Units in the Private Fund shall be suspended and the proceeds from the sale of the Trust Property / asset of the Private Fund shall be first utilized towards discharge of the Private Fund`s liabilities and the fees /remuneration of the Private Fund Management Company (including any Carried Interest / Performance fee) and the Trustee, accrued up to the effective date of revocation, and after appropriate provisions for meeting any expenses connected with such revocation, the balance assets shall be paid to the Unit Holders in proportion to their respective interest in the assets shall be paid to the Unit Holders in proportion to their respective interest in the assets of the Private Fund as at the date on which the decision for revocation was taken. In case of revocation of the Private Fund, all Unit Holders shall be treated pari passu.

## On the completion of the revocation process, the Trustee shall forward to the SECP and the Unit Holders a report on the revocation process containing particulars such as circumstances leading to the revocation, the steps taken for disposal of assets of the Private Fund before revocation, expenses of the Private Fund for revocation and the net assets available for distribution to the Unit Holders, along with a certificate from the Auditors of the Private Fund.

## After the receipt of the termination/revocation of Trustee, if the SECP is satisfied that all actions for revocation of the Private Fund have been completed, the SECP shall cancel the registration of the Private Fund and the Private Fund shall cease to exist as of the date of such cancellation.

# Annexure “1”: Term Sheet

**This table should contain the summary of all the below headings**

|  |  |
| --- | --- |
| **Private Fund Name** |  |
| **Private Fund Type** |  |
| **Category of the Private Fund** |  |
| **Private Fund Management Company** |  |
| **Term** |  |
| **Investment Objective** |  |
| **Investment Strategy** |  |
| **Target Return** |  |
| **Private Fund Size** |  |
| **Minimum Investment**  **Amount by an Eligible Investor** |  |
| **Maximum Number of Eligible Investors** |  |
| **Drawdowns** |  |
| **Formation Cost** |  |
| **Transaction Cost for proposed investments** |  |
| **Operating Expenses of the Private Fund** |  |
| **Private Fund Management Company’s Expense** |  |
| **Broken Deal Expenses** |  |
| **Reinvestment of Capital Investment** |  |
| **First and Subsequent Closing** |  |
| **Investment Period** |  |
| **Investment Restrictions and Conditions** |  |
| **Redemption of units** |  |
| **Management Fee** |  |
| **Carried interest** |  |
| **Preferred Return** |  |
| **Distribution of Income** |  |
| **Financing** |  |
| **Investment Decisions** |  |
| **Liquidity Management** |  |
| **Use of Proceeds** |  |
| **Defaulting Unit Holder** |  |
| **Indemnification** |  |
| **Trustee Fee** |  |
| **Disclosures** | Disclosures required under Regulations, 2015. |

# Annexure “2” DECLARATION BY ELIGIBLE INVESTOR

All Eligible Investors are advised that completion of this declaration form is mandatory as per the Private Fund Regulations, 2015 in order to invest in a Private Fund.

I hereby acknowledge that:

* 1. I have examined the Constitutive Documents carefully and I understand that investment in this Private Fund (i.e., **Name of the Private Fund**) may involve risks which I am willing to undertake;
  2. the Units of the Private Fund have not been recommended by the SECP and in making an investment decision, I will rely on my own judgment of the Private Fund and the terms of the offer including the merits and risks involved.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name, if individual

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature, if individual

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name, if entity

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# Glossary

1. **"Accounting Date"** means the [date] of [month] in each year and any interim date on which the financial statements of the Private Fund are drawn up. Provided that the Private Fund Management Company may, under intimation to the Trustee and after obtaining approval from the SECP, change such date to any other date and such change shall be intimated to the Commission.
2. **"Accounting Period"** means a period ending on and including an Accounting Date and commencing (in case of the first such period) on the date on which the Trust Property is first paid or transferred to the Trustee and subsequently from the next day of the preceding Accounting Period.
3. **“Act”** means the Companies Act, 2017.
4. **"Annual Accounting Period"** or **"Financial Year"** means the period commencing on [date and month] and ending on [date and month] of the succeeding calendar year.
5. **"Applicable Laws”** means Part VIIIA of the repealed Companies Ordinance, 1984, Companies Act, 2017, the Non-Banking Finance Companies (Establishment and Regulations) Rules, 2003, Non-Banking Finance Companies (Establishment and Regulations) Regulations, 2008, Private Funds Regulations, 2015, ITO, 2001, Foreign Exchange Manual, Foreign Exchange Regulation Act, 1947 and all applicable rules, regulations, directives, orders and circulars by the SECP, FBR, SBP or any other authority having jurisdiction over the Private Fund Management Company, the Private Fund and the Trustee, all as may be issued or amended or replaced from time to time, including Shariah Advisor guidelines.
6. **"Application Form"** means the standardized form prescribed by the Private Fund Management Company to be duly filled by the Eligible Investors to purchase Units of the Private Fund, annexed to this Private Placement Memorandum.
7. **"Auditor"** means the Auditor of the Private Fund appointed by the Private Fund Management Company, with the consent of the Trustee, as per the Private Funds Regulations, 2015.
8. **"Bank"** means an institution providing banking services under the Banking Companies Ordinance, 1962, or any other regulation in force for the time being in Pakistan, or if operating outside Pakistan, under the banking laws of the jurisdiction of its operation outside Pakistan.
9. **"Bank Accounts"** means those account(s) opened and maintained for the Private Fund by the Trustee at Banks, the beneficial ownerships in which shall vest in the Unit Holder(s). Bank Accounts shall only be opened in Scheduled Banks (Scheduled Islamic Banks, Islamic banking windows of scheduled commercial banks for Shariah Compliant Private Fun. In case an account needs to be opened with a conventional bank, it shall only be a current account and it shall be opened after specific approval from the Shariah Advisor).
10. **"Business Day"** means any day on which Banks are open for business in Pakistan.
11. **“Charity”** means amount paid by the Trustee, upon instruction of the Management Company and in consultation with the Shariah Advisor, out of the income of the Private Fund to approved Charitable Trust/welfare organization, representing income which is impermissible/ Haram.
12. **"Committed Capital"** shall mean the amount of investment committed by an Eligible Investor and the terms "Capital Commitment(s)" and "Total Committed Capital" shall be construed accordingly in relation to the aggregate amount committed by all subscriptions.
13. **"Companies Ordinance"** or **"Ordinance"** means the Companies Ordinance, 1984, as amended and/or substituted from time to time.
14. **"Connected Person"** shall have the same meaning as assigned in Section 2(xv) of the NBFC Rules 2003.
15. **"Constitutive Documents"** means the Trust deed, Private Placement Memorandum and other principal documents governing the formation of a Private Fund established by a Private Fund Management Company including all related material agreements.
16. **“Capital Contributions / Called Down Capital / Drawdowns”** means actual contribution made by the Unit Holders.
17. **"Duties and Charges"** means in relation to any particular transaction or dealing all, stamp and other duties, taxes, Government charges, bank charges, transfer fees, registration fees and other duties and charges in connection with the increase or decrease of the Trust Property or the creation, issue, sale, transfer, redemption or purchase of Units or the sale or purchase of Investment or in respect of the issue, transfer or cancellation or otherwise which may have become or may be payable in respect of or prior to or upon the occasion of the transaction or dealing in respect of which such duties and charges are payable, but do not include any costs which may have been taken into account in ascertaining the Net Asset Value.
18. **“Eligible Investor”** means a person who has net assets of at least Rs. 15 million excluding the value of personal residence and who furnishes a declaration to the Private Fund Management Company that he understands the risks of investment in a Private Fund.
19. **"Expert"** means a person or consultant with expertise in Private Funds' strategy and operations, transaction services, portfolio acceleration and related matters.
20. **"Final Closing"** shall mean the date marking the completion of 3 years from the First Closing, and the term **"Final Closing Period"** or **"Closing Period"** shall be construed accordingly.
21. **“Financial Institution”** carries the same meaning as defined under the Companies Act, 2017.
22. **"First Closing"** means the first date on which the Private Fund Management Company admits Eligible Investors to the Private Fund.
23. **“Force Majeure”** means any occurrence or circumstance or element beyond the control of, and which cannot be avoided or overcome by, the Private Fund Management Company or the Trustee, and makes the performance of the Constitutive Documents or any obligations of the Private Fund Management Company or the Trustee in whole or in part impossible or impracticable or otherwise delays such performance, including but not limited to any situation where performance is impossible without unreasonable expenditure. Such circumstances include but are not limited to floods, fires, droughts, typhoons, earthquakes and other acts of God and other unavoidable or unpredictable elements beyond reasonable control, such as war (declared or undeclared), insurrection, civil war, acts of terrorism, accidents, strikes, riots, turmoil, civil commotion, pandemics (including COVID 19), any act or omission of a governmental authority, failure of communication system, hacking of computer system and transmissions by unscrupulous persons, closure of stock exchanges, banks or financial institutions, freezing of economic activities and other macro-economic factors, etc. or any other event which prevents or significantly hinders or prevents performance of the operations of the Private Fund Management Company or Trustee.
24. **"Formation Cost"** means preliminary expenses relating to regulatory and registration fees of the Private Fund, flotation expenses of the Private Fund, expenses relating to authorization of the Private Fund, fees, taxes and duties relating to the execution and registration of the Constitutive Documents, legal costs, printing, circulation and publication of the Private Placement Memorandum, announcements describing the Private Fund and all other expenses incurred until the end of the Final Closing.
25. **“Haram Income”** means any income prohibited by the Shariah.
26. **"IAS"** means International Accounting Standards.
27. **"IFRS"** means International Financial Reporting Standards.
28. **"Investment"** means any Investment forming part of the Trust Property.
29. **"Investee Company"** or **"Portfolio Company"** means the companies in which the Private Fund Management Company holds Investments such as investments held in form of physical and CDS eligible shares and securities of unlisted companies or listed companies for Turnaround, or companies listed on SME Board or an unlisted company engaged in business of investing in development of new products or process or expansion of business held by the Private Fund.
30. **"Investment Committee"** means the committee formed by the Private Fund Management Company that shall be responsible for approving and recommending Investments of the Private Fund.
31. **"Investment Period"** means the period commencing on the First Closing Date and, unless terminated earlier in accordance with the Constitutive Documents, ending on the [X year] of the First Closing Date, or any extension thereof.
32. **“Investment Policy Statement”** means a statement obtained from the investor which at least covers the information regarding investor knowledge, qualification, risk appetite and investment objective;
33. **“Alternative Fund”** means a Private Fund which invests in portfolio of securities and other financial assets other than a Private Equity and Venture Capital Fund.
34. **"Net Assets"** means the difference between the value of the assets and liabilities of a Private Fund established by the Private Fund Management Company, on any given date, and computed in the manner specified in the Private Placement Memorandum in accordance with the Regulations, 2015.
35. **"Net Asset Value"** or **"NAV"** means per Unit value of the Private Fund arrived at by dividing the Net Assets by the number of Units outstanding.
36. **"Private Placement Memorandum"** means this Private Placement Memorandum, issued by the Private Fund Management Company describing the details of a Private Fund and giving an offer for subscription by Eligible Investors only;
37. **"PKR"** or **"Rs"** means Pakistan Rupees.
38. **"Private Fund Management Company"** shall mean Company licensed by the Commission to provide Private Equity and Venture Capital Fund Management Services under NBFC Rules, 2003.
39. **"Private Equity and Venture Capital Fund"** shall have the meaning ascribed to it in the Section 2 (xiii) of the Regulations,2015.
40. **"Par Value"** means the face value of a Unit i.e. Rs. 1,000,000 or such other amount determined by the Private Fund Management Company from time to time and disclosed in this Private Placement Memorandum.
41. **“Private Fund”** means an arrangement which has the purpose of pooling funds from one or more Eligible Investors for investment in a portfolio of securities or other financial assets for profit, income or other returns and where participants of the Private Funds, neither have day to day control over the management of Private Fund property, nor the right to give directions in respects of such management and which is established and operated by the Private Fund Management Company. Provided that for the purpose of these Regulations following shall not classify as a Private Fund:
42. collective investment schemes regulated under the Non-Banking Finance Companies and Notified Entities Regulations, 2008;
43. employee welfare trusts or gratuity trusts or employees provident fund or employees’ pension fund setup for the benefit of employees by companies; and
44. any such pool of funds which is separately regulated by the Commission or which is already established under any other specific law.
45. **"Realization Proceeds"** mean all proceeds received by the Private Fund during the Term of the Private Fund.
46. **"Register"** means the Register for the purpose of recording the details of the Units held by each Unit Holder of the Private Fund;
47. **"Registrar"** or **"Transfer Agent"** means a company duly registered under the relevant laws including a Bank that the Private Fund Management Company shall appoint for performing the Registrar Functions. The Private Fund Management Company may itself perform the Registrar Functions.
48. **“Receiver”** means the court appoints someone when the court is of the opinion that neither of the party should manage the property till the time the matter is decided.
49. **"Rules"** or "NBFC Rules 2003" mean Non−Banking Finance Companies (Establishment and Regulation) Rules 2003, as amended from time to time.
50. **“Regulations, 2008”** means Non-Banking Finance Companies and notified entities Regulations, 2008.
51. **“Regulations, 2015”** means Private Funds Regulations, 2015 and includes Forms and Schedules annexed.
52. **"SECP"** or **"Commission"** means Securities and Exchange Commission of Pakistan established under Securities and Exchange Commission of Pakistan Act, 1997 and shall include its successor.
53. **“Shariah”** means divine guidance as given by the Holy Quran and the Sunnah of Holy Prophet Muhammad and embodies all aspects of the Islamic faith, including beliefs, practices, Rules and principles as per the interpretation of the Shariah Advisor of the Private Fund.
54. **“Shariah Advisor”** means an Institution or a body of Islamic scholars, or an individual Islamic scholar, appointed by the Management Company under Shariah advisor Regulation, 2017 of SECP and intimation to the Commission and the Trustee, having knowledge of Islamic finance, to supervise and monitor the activities of the Private Fund in order to ensure that all its activities comply with Shariah.
55. **“Shariah Compliant”** means any activity that is in accordance with the Islamic Shariah as advised by the Shariah Advisor.
56. **"Subscription Price"** means the price at which the Private Fund Management Company shall offer one Unit of the Private Fund to the Eligible Investors, as stated in this Private Placement Memorandum.
57. **“Supplemental Deed”** means a deed supplemental to the Trust Deed, executed by the Private Fund Management Company and the Trustee, after seeking approval of the SECP, to modify, add to, alter and amend or amend and restate the provisions of this Deed or any other Supplemental Deed in such manner and to such extent as may be considered expedient for all purposes, which shall be consolidated, read and construed together with this Deed.
58. **"Term"** means the duration of the Private Fund, which is [state number of years] years.
59. **"Term Sheet"** means the Term Sheet annexed with this Private Placement Memorandum.
60. **"Trust"** or **"Private Fund"** means the Private Fund constituted by the Trust Deed.
61. **"Trust Deed"** means the deed executed between the Private Fund Management Company and the Trustee in respect of a Private Fund
62. **"Trustee"** means a person appointed as trustee or custodian as the case may be in respect of a Private Fund established in accordance with the Regulations,2015.
63. **"Trust Property"** means any and all assets comprising the Private Fund under the Trust Deed.
64. **"Turnaround"** means a planned Investment in an investee listed company for its financial recovery or for poor performance due to low profitability or financial pressures for a period of time.
65. **"Units"** mean the instrument of ownership of the Private Fund signifying the beneficial interest of the Unit Holders in that Private Fund;
66. **“Unit Holder”** means the Eligible Investor who owns one or more units of a Private Fund and whose name appears in the Register.
67. **“Zakat”** has the same meaning as in Zakat and Ushr Ordinance, 1980 (XVIII of 1980).