

GOVERNMENT OF PAKISTAN
Securities and Exchange Commission of Pakistan

Islamabad, the 3rd August, 2020

NOTIFICATION

S.R.O.701(I)/2020.- The following draft of certain further amendments in the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003, proposed to be made by the Securities and Exchange Commission of Pakistan with the approval of the Federal Government, in exercise of the powers conferred by sub-section (1) of section 282B of the Companies Ordinance, 1984 (XLVII of 1984) read with clause (b) of section 43 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997), is hereby published for information of all persons likely to be affected thereby and notice is hereby given that comments or objections thereon, if any may be sent within fourteen days of the publication of the draft in the official Gazette. Comments or objections received if any before expiry of the said period shall be taken into consideration: -

DRAFT AMENDMENTS

In the aforesaid Rules, -

(1) in rule 2, -

(a) in sub-rule (1), -

(i) in clause (xix), for sub-clause (i), the following shall be substituted, namely:-

“(i) surplus on revaluation of fixed assets, treasury stocks, intangible assets and surplus on revaluation of investments shall not be included in the equity;”

(ii) for clause (xxv), the following shall be substituted, namely:-

“(xxv) “investment advisory services” means the services provided for managing,-

(a) discretionary or non-discretionary portfolios for both individual and institutional clients; and

(b) listed and traded Collective Investment Schemes, and include the business of advising others as to the value of securities or as to the advisability of investing in, purchasing or selling of securities, for remuneration;”;

(iii) in clause (xxxixa), the words “or a person who replaces him” shall be omitted; and

(iv) in clause [(xxxixb),-

- (a) after the word “Eligible Investors” the word “mainly” shall be inserted; and
 - (b) the word “property” shall be omitted.

- (2) in rule 4, for sub-rule (3), the following shall be substituted, namely: -

“(3) The permission granted under sub-rule (2) shall be valid for a period of six months unless extended by the Commission on an application of the promoters made before the expiry of six months and during the validity of this permission, the promoters shall get the NBFC incorporated and submit an application to the Commission for grant of licence, after fulfilling all the conditions specified in these rules.”;

- (3) in rule 5,-
 - (a) in sub-rule (2), for the full stop at the end, a colon shall be substituted and thereafter the following new proviso shall be added, namely;-

“Provided that existing non-deposit lending NBFC may apply for licence of private equity and venture capital fund management services, subject to the condition that the private equity and venture capital fund management services licence shall complement its existing licensed form of business.”;

 - (b) in sub-rule (5),-
 - (i) for the words “Every other person engaged in any form of business shall within a period of six months of coming into force of these rules” the words “Every person engaged in any form of business shall immediately” shall be substituted;
 - (ii) in the first proviso, the word “already” shall be omitted; and
 - (iii) in the second proviso, after the words “if engaged”, the words “or desirous to engage” shall be inserted;
 - (iv) in the third proviso, for the semi colon and the word “and” at the end a colon shall be substituted and thereafter the following new proviso shall be added, namely:-

“Provided also that a person shall not be required to obtain licence for conducting limited scale live tests of Non-Banking Finance Company related innovative fintech products, services, processes and/or business models in a controlled environment for a limited period of time subject to such conditions as may be notified by the Commission.”

 - (c) in sub-rule (6),-
 - (i) for the word “or any” the word “the” shall be substituted;
 - (ii) for clause (e), the following shall be substituted: -

“(e) the company’s promoters and majority shareholders have

deposited their shares with Central Depository Company of Pakistan Limited in an account marked as blocked and such shares shall not be sold or transferred without prior approval of the Commission and shall be kept unencumbered.”; and

(iii) for clause (f), the following shall be substituted, namely: -

“(f) the company’s promoters and majority shareholders have given an undertaking that they shall not enter into any agreement for sale or transfer of their shares in any manner without prior approval of the Commission;”;

(d) sub-rules (8) and (9) shall be omitted;

(e) in sub-rule (10), the words “or renewal” shall be omitted.

(4) in rule 7,-

(i) in sub-rule (1),-

(a) in clause (ba), for the semicolon at the end, a colon shall be substituted and thereafter the following new proviso shall be added, namely:-

“Provided that an NBFC shall change its external auditor at least every five years.”; and

(b) in clause (h), for the colon, at the end, a semicolon shall be substituted and thereafter the proviso shall be omitted;

(ii) in sub-rule (2), in clause (c), the expressions, “merge with, acquire or takeover any other company” shall be omitted.

(iii) for sub-rule (3), the following shall be substituted, namely:-

“(3) No NBFC shall—

(a) commence business unless it has such minimum equity as may be prescribed by the Commission in the official Gazette; and

(b) continue business unless it has such minimum equity as may be specified by the Commission for all NBFCs in general and for an NBFC in particular.”;

(iv) after sub-rule (3), amended as aforesaid, the following new sub-rules shall be added , namely; -

“(4) The Commission may specify any other capital adequacy

requirements in addition to the minimum equity requirements for forms of business in general or for a form of business in particular.

- (5) The Commission may specify any other requirements in lieu of minimum equity requirements for any particular form of business.”;

- (5) after rule (7A), the following new rule shall be inserted namely: -

“(7B). Requirements for majority shareholder of NBFC: - (1) No person can hold or become beneficial owner of ten percent or more shares of an NBFC without prior approval of the Commission.

(2) If the Commission has determined that a person is holding or is a beneficial owner of ten percent or more shares of an NBFC without prior approval of the Commission or a person that acquired shareholding with prior approval of the Commission subsequently fails to meet the fit and proper test as the Commission may, by an order in writing stating reasons, require such person to reduce, divest or transfer to a fit and proper person, his shareholding in the NBFC within such reasonable period and in such manner as may be specified in the order:

Provided that the Commission may, in the interest of the investors/shareholders of NBFC or general public, by an order in writing stating reasons, require a person holding less than ten percent shares of an NBFC to reduce, divest or transfer to a fit and proper person, his shareholding in the NBFC within such reasonable period and in such manner as may be specified in the order.”;

- (6) for Form-I, the following shall be substituted, namely:-

“FORM-I
[see rule 4(1)]
Application for Permission to Form a Non-Banking Finance Company

Dated: _____

To
The Securities and Exchange
Commission of Pakistan,
Islamabad.

Dear Sir,

We hereby apply for grant of permission under rule 4 of the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003, to form a

Non-Banking Finance Company under the name and style of *-----
----- to undertake -----. **

The information and documents as required in Annexure to this form duly verified and signed by all promoters and proposed directors is submitted.

We do hereby solemnly, sincerely declare that the information provided is true, and correct to the best of our knowledge and nothing has been concealed.

We undertake to keep this information up to date by communicating changes or modifications therein within fourteen days of such changes or modifications.

A receipt of rupees [(Rs. _____)] being the processing fee, deposited in -----
-- on ----- is enclosed.

Yours faithfully,

Signed by all promoters and proposed directors.

Verification by Oath Commissioner

* Name of the Company

**Form of Business”;

(7) for Annexure to Form-I, the following shall be substituted, namely:-

“ANNEXURE TO FORM-I

[see rule 4]

**INFORMATION TO BE SUPPLIED FOR OBTAINING
PERMISSION TO FORM A NON – BANKING FINANCE COMPANY**

1. General Information

- i. Draft of the Memorandum and Articles of Association.
- ii. Feasibility report/ business plan of the proposed company.
- iii. Percentage of capital, each sponsor proposes to contribute in the proposed company / sources of funds to meet minimum reserve requirement in case of the company is proposed to be a company limited by guaranty.
- iv. Latest CIB report in respect of sponsors.
- v. Names of the bankers of the sponsors along with respective branch details.
- vi. National Tax/ CNIC Numbers of the proposed sponsors, directors, CEO

& Chairman.

2. Information Required from Individuals

Individuals will provide complete information for each of its promoters, proposed directors and proposed CEO as required per Fit & Proper Criteria provided in Annexure "A" and Annexure "B" of Schedule IX of the Non-Banking Finance Companies and Notified Entities Regulations, 2008 including but not limited to the following:

- i. Full name, former name if any, father's or husband's name, nationality, residential and business address, national tax number, present occupation of the following:
 - a. each sponsor,
 - b. proposed director,
 - c. proposed chief executive and
 - d. proposed chairman of the Board.
- ii. Names and addresses of companies, firms and other organizations of which the aforesaid sponsors, proposed chief executive and proposed chairman are or have been directors or partners during the last ten years.
- iii. Educational as well as professional qualifications and experience of persons mentioned in paragraph 1 above, supported by documentary evidence.
- iv. Latest Income tax and wealth tax returns of the sponsors and sponsoring directors and CEO;
- v. Affidavit from each person mentioned in paragraph 2(i) above, stating that-
 - (a) he has not been associated with any illegal banking business, deposit taking or financial dealings;
 - (b) he and companies in which he is a director or major shareholder have no over-due loans or installments outstanding towards banks or other financial institutions;
 - (c) neither he nor companies in which he is a director or major shareholder has defaulted in paying taxes as on the date of application;
 - (d) he has not been sponsor, director or chief executive of a defaulting cooperative finance society or finance company;
 - (e) he has never been convicted of fraud or breach of trust or of an offence involving moral turpitude or removed from service for misconduct;
 - (f) he has neither been adjudged an insolvent nor has defaulted in making payments, to his creditors; and
 - (g) his net-worth is not less than twice the amount to be subscribed by him personally (not applicable to a nominee director).

3. Information Required from Corporates/ Institutions

Corporates/ Institutions will provide complete information as required per Fit & Proper Criteria provided in Annexure "A" b of Schedule IX of the Non-Banking Finance Companies and Notified Entities Regulations, 2008 including but not limited to the following:

- i. Names and addresses of the nominee directors;
- ii. Detail of ultimate beneficial ownership;
- iii. Audited financial statements for the last three years;
- iv. Details of subsidiary and associated undertakings, if any; and
- v. National Tax numbers and details of taxes paid by the company itself and also for the persons under its control.”;

(8) for Form-III, the following shall be substituted, namely:-

“FORM-III
[see rule 5([6])]
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Islamabad, Dated, the _____
Registration No. _____

**LICENCE TO CARRY OUT OR UNDERTAKE * _____ AS NON-BANKING
FINANCE COMPANY**

The Securities and Exchange Commission of Pakistan having considered the application for grant of license under rule 5 of the Non-Banking Finance Company (Establishment and Regulation) Rules, 2003, by ** _____ and being satisfied that the said ** _____ is eligible for the license, hereby grants, in exercise of the powers conferred by [sub-rule (6)] of rule 5 of the Non- Banking Finance Company (Establishment and Regulation) Rules, 2003, license to ** _____ to undertake or carry out * _____ subject to the conditions stated herein below or as may be prescribed or imposed hereafter.

Signature of the Officer

* Any one or more of the activities or functions as mentioned under section 282 A of the Companies Ordinance, 1984

** Name of the Company

(Official Seal and Stamp)”;

(9) Form-IV and V shall be omitted; and

- (10) in Schedule I, in column 4, for the words “One third” the word “N/A” shall be substituted for “Private Equity and Venture Capital Management Services”.

[File No. SY/SECP/8/13]


(Bilal Rasul)
Secretary to the Commission