PART II
Statutory Notifications (S.R.O.)

GOVERNMENT OF PAKISTAN

SEcurities and ExChange COmmision of Pakistan

NOTIFICATION

Islamabad, the 10th June, 2020

S. R.  O.  545(1)/2020.— In exercise of the powers conferred by sub-section (2) of the section 282B of the Companies Ordinance, 1984 (XLVII of 1984), the Securities and Exchange Commission of Pakistan hereby makes the following amendments in the Private Funds Regulations, 2015, the same having been published in the official Gazette vide S.R.O. 1214(I)/2019, dated October 8, 2019, namely:—

AMENDMENTS

In the aforesaid Regulations,—

(1) in regulation 2,—

(1)

Price: Rs. 10.00

[5639(2020)/Ex. Gaz.]
(a) for clause (iii), the following shall be substituted, namely:—

“(iii) “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;”;

(b) for clause (xiii), the following shall be substituted, namely:—

“(xiii) “Private Equity and Venture Capital Fund” means a Private Fund established in a closed-end structure for investment mainly in securities or financial assets other than derivatives of an unlisted company or for turning around a listed company or listed and unlisted SME or an unlisted company engaged in business of investing in developing a new product or process or expansion of business:—

Provided that a Private Equity and Venture Capital Fund may invest in units of other Private Equity and Venture Capital Fund.”;

(c) for clause (xx), the following shall be substituted, namely:—

“(xx) “Trustee” means a person appointed as trustee or custodian as the case may be in respect of a Private Fund established in accordance with these Regulations;”;

(2) in regulation 3, for the sub-regulations (1), the following shall be substituted, namely:—

“(1) Prohibition to engage in business of Private Equity and Venture Capital Fund Management Services without registration. - (1) No person shall establish, launch, or raise money in Pakistan for investment in a Private Fund unless the Fund is registered under these Regulations.”;

(3) in regulation 4, for clause (i), following shall be substituted namely:—

“(i) It is established as a trust under the Trust Act, 1882 (II of 1882), or as company under Companies, Act 2017, or as limited liability partnership under Limited Liability Partnership Act 2017 or any other legal structure as approved by the Commission;”;

(4) in regulation 5,—

(a) for sub-regulation (2), the following shall be substituted namely:—
“(2) Private Fund Management Company shall submit the draft Trust Deed along with the name and consent of the trustee of the proposed Private Fund in accordance with Schedule-II or draft Memorandum of Association or draft Limited Liability Partnership Agreement along with custodian agreement for approval of the Commission as per schedule-III.;”

(b) for sub-regulation (3), the following shall be substituted namely:

“(3) Upon securing in-principle approval of the Commission, the Private Fund Management Company shall execute and seek registration of the Trust Deed in accordance with the provisions of the Trust Act, 1882 (II of 1882) or incorporate Company in accordance with Companies Act, 2017 or register limited liability partnership in accordance with Limited Liability Partnership Act, 2017 as the case may be.;”

(5) in regulation 7, for clause (i), the following shall be substituted namely:

“(i) take under its control all the property of the Private Fund and hold it for the Unit Holders in accordance with the Rules, Regulations 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.”

(6) in regulation 8,—

(a) for clause (i), the following shall be substituted namely:

“(i). have at least minimum equity of rupees ten (10) million: Provided that this shall not be applicable to an NBFC having valid investment advisory licence and complying with the minimum equity requirements required for investment advisory licence.”

(b) after the clause (ii), the following new clause shall be inserted namely:

“(iia) before offering a private fund to an eligible investor shall assess or take into consideration financial sector experience, risk tolerance and net worth of eligible investor as per Schedule-VI;”
(c) for clause (iii), following shall be substituted namely:

“(iii) prepare and fill the Investment Policy Statement in consultation with the eligible investor as per Schedule VI;”;

(d) in clause (xx) after the word “four” the figure “3” shall be substituted by the figure “4”;
(iii) it has borrowed only from a financial institution/companies;

(iv) that 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; and

(v) that any 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.”;

(b) after the sub-regulation (4), the following new clauses shall be inserted namely:

“(5) 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).

(6) A Private Fund can be sub-categorized as Private Equity and Venture Capital Fund, Venture Capital Fund, Angel Fund, Small and Medium Enterprise Fund, Infrastructure Fund, Impact Fund, Hedge Fund etc.

(7) A Private Fund can be categorized into any sub-category subject to investment of at least seventy percentage of its net assets in eligible investment of that sub-category investment.”

(9) in regulation 12,—

(a) in clause (i), after the word “benchmark” the words “if any” shall be inserted ;

(b) after clause (viii), the following new clause shall be inserted namely:

“ix. Name and details of auditor of the Fund.”

(10) in regulation 13, the following shall be substituted namely:—

“(13) Private Fund valuation and pricing,— The Private Fund Management Company shall ensure that;

(i) the valuation methodology is documented and disclosed in the Placement Memorandum specifying how the portfolio valued and units priced;
(ii) the investment of the Private Fund is fairly valued on a regular basis and the frequency of such valuation shall be clearly disclosed in the Placement Memorandum;

(iii) the fund is valued at least once in a financial year by an independent valuer appointed with the consent of the trustee:

Provided that a fund sub-categorized as venture Capital Fund shall be valued once in two years by independent valuer appointed with the consent of trustee.”;

(11) in FORM I, in clause (B), after sub-clause (d), the following shall be inserted, namely:

“(e) Certified true copy of the Memorandum of Association or Limited Liability Partnership Agreement;

(f) Custodian Agreement;

(g) Certificate of incorporation/registration as the case may be;”;

(12) in Schedule-III, the following shall be substituted, namely:

“SCHEDULE-III
[See Regulation 5 (2)]

Contents of Letter for Registration of Incorporation of Private Fund

To,

The Chief Executive Officer,
Name of the Company,
Address.

Dear Sir,

The approval to the draft trust deed/Memorandum of Association/Limited Liability Agreement is without prejudice to the conditions and the requirements stipulated in the license issued in favor of the Private Fund Management Company, the Non-Banking Finance Companies (Establishment & Regulation) Rules, 2003 and Private Fund Regulations 2015. Further action will be taken on receipt of duly registered copy of the trust deed/Certified true copy of Limited Liability Agreement and certificate of Registration/Certified true copy of Memorandum of Association along-with certificate of incorporation.

Yours truly,”; and

(13) in Schedule VI, the following shall be substituted namely:—
“SCHEDULE-VI
[See Regulation 8 (iii)]

Contents of Investment Policy Statement

*Notice:*— This is not an exhaustive list. The Private Fund Management Company is bound to disclose any information that may be necessary for Eligible Investors to make an informed judgment.

(i)- Financial Sector Knowledge and Experience

In determining eligible investor’s financial sector knowledge and experience following shall be considered:

(a) The investor’s qualification, knowledge and understanding of the relevant financial market, types of financial products or arrangements and the risks involved;

(b) The length of time the investor has participated in relevant financial markets; and

(c) Frequency of dealings and the extent to which the investor has relied on the financial advice from the investment service providers;

(ii)- Risk Tolerance

In determining eligible investor’s risk tolerance following shall be considered:

(a) Relevance of a private fund in which investor intends to make investment;

(b) The size and nature of transactions that have been undertaken by the investor in relevant financial markets;

(c) The composition and size of the investor’s existing investment portfolio, if any;

(d) Any specific objective that investor intends to achieve through investment in this Private Fund;

(e) Investor’s tolerance for risk *i.e.* both ability and willingness of client to bear risk and return objectives;

(f) Liquidity requirements if any in the near future and time horizon for investment in relation to specific security and overall portfolio;

(g) Investor’s tolerance on borrowing or leverage by the private
fund selected for investment;

(h) Tax or legal consideration which in future might affect investor’s investment decision; and

(i) Other unique circumstances, matters or aspects of investor which the Private Fund Management Company considers relevant;

[No. SCD/NBFC/PFR/2020-]

EJAZ ALAM KHAN,

Secretary to the Commission.