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## CHAPTER 17

## 1. NON-BANKING FINANCE COMPANIES

NBFC means following forms of business as notified in the official Gazette by the Federal Government or any other form of business which the Federal Government may, by notification in the official Gazette specify from time to time, namely:-

- (a) asset management services;
- (b) discounting services;
- (c) housing finance services;
- (d) investment advisory services;
- (e) investment finance services;
- (f) leasing;
- (g) pension fund scheme business;
- (h) private equity and venture capital fund management services;
- (i) REIT management services; and
- (j) venture capital investment;

Where

**FUND MANAGEMENT NBFC**” means an NBFC licenced by the Commission to undertake Asset Management Services or REIT Management Services or Pension Fund Scheme Business or Private Equity and Venture Capital Fund Management Services or Investment Advisory Services or any combination thereof.

**Lending NBFC**” means an NBFC licenced by the Commission to undertake leasing or housing finance services or investment finance services or discounting services;

**Non-Bank Micro Finance Company**” means a non-deposit taking NBFC primarily engaged in the business of Micro Financing as specified by the Commission from time to time

**Private Fund Management Company**” means company licenced by the Commission to provide private equity and venture capital fund management services;

**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 funds, neither have day to day control over the management of fund property, nor the right to give directions in respect of such management and which is established and operated by private fund management company:

Provided that for the purpose of these rules following shall not classify as a private fund:

(i) collective investment schemes regulated under the Non-Banking Finance Companies and Notified Entities Regulations, 2008;

(ii) employee welfare trusts or gratuity trusts or employees provident fund or employee pension fund setup for the benefit of employees by companies;  
and

(iii) any such pool of funds which is separately regulated by the Commission or which is already established under any other specific law

### **Explanation of Services**

**1.1 Investment Finance Services** include money market activities, capital market activities, project finance activities, corporate finance services and general services as specified by the Commission by notification in the official Gazette;

**1.2 Leasing** “includes financial services provided on operating lease or finance lease basis, (in accordance with applicable International Accounting Standards) or any other admissible mode determined by the Commission from time to time”

**1.3 Housing Finance Services** “means the business of providing consumer or commercial Finance on conventional or Islamic basis to a person for the purchase or construction of house or apartment or for purchase of land and construction thereupon including the facilities availed for the purpose of making improvements in house or apartment;

**1.4 private equity and venture capital fund management services”** means services provided for management of private funds;

**1.5 Discounting Services** “mean the services relating to the discounting of financial instruments on conventional or Islamic basis”

**1.6 Investment Advisory Services** “mean the services provided for, managing portfolios for both individual and institutional clients 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”

**1.7 Asset Management Services**

“mean the business of providing for management of collective investment schemes.”

**1.8 Collective Investment Scheme**

“means any arrangement whose sole purpose is the collective investment of funds in a portfolio of securities, or other financial assets for profits, income or other returns, and where the participants, who have pooled in the funds, do not have any day to day control over the management of the scheme, whether or not they have the right to be consulted or to give direction in respect of such management:

Provided that the following shall not be considered as a Collective Investment Scheme for the purpose of these regulations:-

(a) employee welfare trusts or gratuity trusts or employees provident funds or employees’ pension funds setup for the benefit of employees by companies; and

(b) any such pool of funds which is separately regulated by the Commission or which is already established under any specific law”.

**1.8.1 Open-End Scheme/**

“means a collective Investment Scheme which offers units for sale based on net asset value on continuous basis without specifying any duration for redemption and which entitles the holder of such units on demand to receive his proportionate share of the net assets of the scheme less any applicable charges on redemption or revocation;

**1.8.2 Closed End Fund**

“means an investment company or a closed-end scheme”

**1.8.3 Closed End Scheme**

means a collective investment scheme having a specified period of maturity which does not continuously offer its certificates for sale to investors and entitles the holder of certificates, to receive, proportionate share of the net assets of the closed end scheme:

Provided that existing closed end scheme shall be classified as closed end scheme until revoked or converted into open end scheme for the purpose of these regulations

**1.8.4 Investment Company**

“means a company registered with the Commission under the Ordinance in accordance with such criteria as may be specified by the Commission by notification in the official Gazette”  
(converted to notified entities through NBFC Regulations 2008)

## 2. COMPANIES ORDINANCE (RE: NBFC)

### Power of Commission to Make Regulations [Section 282 B]

The Commission may make regulations, for the establishment and regulation of NBFCs and notified entities and their business and activities and such regulations may provide for any matter which the Commission deems fit for the effective regulation of NBFCs, notified entities and their businesses and activities.

### Incorporation of NBFC [Section 282 C]

1. NBFC shall be incorporated with the approval of the Commission.
2. It shall carry out business only if it has got a valid license and minimum equity for that business.
3. Provisions of this part shall remain applicable even if the NBFC's license is expired/cancelled etc.

### Power to Issue Directions [Section 282 D]

Commission may issue directives to any notified entity or NBFC as and when it feels it is necessary,

1. In the public interest or
2. To prevent the affairs of NBFC/Notified entity being conducted in a manner prejudicial to the interest of shareholders/certificate holders or the NBFC itself.
3. To secure proper management of NBFC

### Power to Remove [Section 282 E]

1. When the Commission is satisfied that
  - i. Continued association of any officer (including chairman or chief executive etc.) is detrimental to the interest of NBFC or its shareholders/certificate holders or
  - ii. The public interest so demands or
  - iii. To secure proper management of NBFC

It is necessary so to do, the Commission may by order, remove from office any chairman or director or chief executive or other officer etc.

2. Such chief executive, chairman or chief executive etc. shall be afforded an opportunity of being heard however Commission may suspend the person for the time being and appoint some other person in his behalf for taking care of the NBFC if it is believed that the person's continued affiliation even during the time provided for an opportunity of being heard would be detrimental for the company's interest.

3. Such person holding the position by the order of Commission shall possess the office within the pleasure of Commission but not for a period exceeding three years and he shall not incur any liability for holding such office.

#### **Power to supersede Board of Directors [Section 282 F]**

1. Notwithstanding anything contained in any other provision of this Ordinance, where the Commission is satisfied that
  - a. the association of the Board of Directors of any NBFC or a notified entity is or is likely to be detrimental to the interest of the NBFC or the notified entity or its shareholders or
  - b. is otherwise undesirable; or for all or any of the reasons specified above
  - c. it is necessary so to do,

The Commission may, for reason to be recorded in writing, by order, supersede the Board of Directors of a NBFC or a notified entity with effect from such date and for such period as may be specified in the order.

#### **Power to Require Furnishing Information [Section 282 G]**

The Commission may, at any time require NBFCs generally, or any NBFC or notified entity in particular to furnish it with any statement or information or document relating to the business or affairs of such NBFC or notified entity or NBFCs and, without prejudice to the generality of the foregoing power, may call for information, at such intervals as the Commission may deem necessary.

#### **Special Audit [Section 282 H]**

- (1) Notwithstanding anything contained in any other provision of this Ordinance, the Commission shall monitor the general financial condition of a NBFC or notified entity and, at its discretion, may order special audit and appoint an auditor to carry out detailed scrutiny of the affairs:

Provided that the Commission may, during the pendency of the scrutiny, pass such interim orders and directions as may be deemed appropriate by the Commission.

- (2) On receipt of the special audit report, the Commission may direct to do or to abstain from doing certain acts and issue directives for immediate compliance which shall forthwith be complied with, or take such other action under this Ordinance as it deems fit.

#### **Inquiry by Commission [Section 282 I]**

1. The Commission may cause an inquiry or inspection to be made by any person appointed in this behalf into the affairs of a NBFC or of any notified entity or of any of its directors, managers or

other officers or persons responsible for its affairs and every person in the NBFC shall be responsible to provide all information and records.

2. The person conducting an inquiry or inspection may call for, inspect and seize books of accounts and documents in possession of any such NBFC or the notified entity or any of its directors, managers or other officers.

**Penalty for failure, refusal to comply with, or contravention of any provision of this Part [Section 282 J]**

1. If a NBFC or a notified entity or its officers (including auditors) fails or refuses to comply with, any provision contained in this Part or of any of the provisions of the rules or regulations made under this part or regulation shall, in addition to any other liability under this Ordinance, be also punishable with fine the amount of which shall not exceed fifty million rupees:

Provided that every director, manager, or other officer shall, unless he proves that the failure or contravention or default took place or committed without his knowledge, or that he exercised all diligence to prevent its commission, be deemed to be guilty of the offense.

2. Without prejudice to the above, the Commission may cancel or suspend any one or more of the licenses in respect of the various forms of business of the NBFC or registration granted to any notified entity after issuing a show cause notice
3. Upon cancellation of all the licenses or registrations the functions and carrying on the business of NBFC or the notified entity shall cease and the Commission may move to the Court for winding up of the NBFC or the notified entity.
4. If the business is carried on despite of the fact that license has been cancelled, the chief executive, by whatever name called, and every director, manager, and other officer of the NBFC or the notified entity as the case may be, who is responsible for such default, shall be punishable with fine not exceeding fifty million rupees and to a further fine of two hundred thousand rupees for every day after the first during which the default continues

**Penalty for making false statement, etc. [Section 282 K]**

If any person, being the chairman, director, chief executive, by whatever name called, willfully makes a false statement for gaining direct or indirect benefit for himself or any of his family members, shall be punishable with imprisonment upto three years and a fine not less than one hundred thousand rupees.

**Amalgamation of NBFCs [Section 282 L]**

1. NBFCs can be amalgamated with each other if the scheme containing the amalgamation is approved separately by two third majorities of shareholders of each NBFC. Afterwards this scheme needs to be approved by the Commission in writing.



2. Notice must be sent to every shareholder entitled to attend the meeting as per articles of association. It shall further be published in two newspapers for three consecutive weeks which circulate in the locality of the registered office of the company and one newspaper shall be in a language commonly understood in the locality.
3. Dissenting shareholders of NBFC shall be entitled to recover the price of his shares from NBFC; such price shall be determined by the Commission.
4. The remaining NBFC shall give a notice of the fact of amalgamation along with the order of the Commission to the Registrar who shall strike off the name of the dissolving NBFC.

#### **Punishment and adjudication of fine or penalty [Section 282 M]**

In case of non-compliance or default of award of imprisonment or fine imposition, a directive is issued by the Commission to seek adjudication on the penalty or fine from High Court, however, the person concerned shall be given opportunity of being heard.

#### **Rehabilitation of NBFC and notified entities [Section 282 N]**

1. Commission shall have same powers for rehabilitation of NBFC as Federal Government has for other companies.
2. Where Commission declares any unit as sick, it may apply to the Court and the provisions of following Sections shall apply accordingly
  - a. **412.** Power of Court to assess damages against delinquent directors, etc.-
  - b. **413.** Liability for fraudulent conduct of business.
  - c. **414.** Liability under **Sections 412 and 413** to extend to partners or directors in firm or body corporate.-
  - d. **415.** Penalty for fraud by officers of companies which have gone into liquidation.
3. Commission may make a further application to the Court for vacating any preferences given to any person within 4 months immediately before the declaration of the NBFC as sick unit. Provisions of **Section 408 and 409** regarding such preferences shall apply mutatis mutandis.

### 3. NON BANKING FINANCE COMPANIES RULES AND REGULATIONS

#### 3.1 Definitions.

In these Rules, unless there is anything repugnant in the subject or context,

- (i) "assets" mean properties of all kinds tangible or intangible, including shares, units, certificates, securities, deposits, right and bonus shares, cash, bank balances, profits, dividends, fees, commissions, all receivables, claims, derivatives contract, licenses, privileges, accrued or accruing or contingent;
- (ii) "Associated companies" means associated companies and associated undertakings as defined in sub-section (2) of section 2 of the Ordinance;
- (iii) "Brokerage business" means the services being provided by a broker registered under the Brokers and Agents Registration Rules, 2001;
- (iv) "central depository company" means central depository as defined under the Securities and Exchange Ordinance, 1969 (XVII of 1969);"
- (v) "Close relative" includes spouse, lineal ascendants and descendants and brothers and sisters;
- (vi) "Commission" means the Securities and Exchange Commission of Pakistan established under the Securities and Exchange Commission of Pakistan Act, 1997(XLII of 1997);
- (vii) "Company" means a company as defined under the Companies Ordinance, 1984 (XLVII of 1984);
- (viii) "connected person" in relation to an NBFC or a collective investment scheme, means,-
  - (a) any person or trust beneficially owning, directly or indirectly, ten percent or more of capital of the NBFC or the notified entity;
  - (b) any person able to exercise, directly or indirectly, ten percent or more of the total voting power in that NBFC or the notified entity;
  - (c) a notified entity being managed by an NBFC;
  - (d) the NBFC managing a collective investment scheme;
  - (e) a trustee or custodian of the notified entity;
  - (f) any person or trust controlled by a person who or which meets the descriptions given in sub-clause (a) to (e);

- (g) any member of the group of which that person, or trust forms part; and
- (h) any director or officer of that NBFC or the investment company being managed by that NBFC or of any of their connected persons as specified in sub-clauses (a) to (g);
- (ix) “custodian” includes a bank licensed under the Banking Companies Ordinance, 1962(LVII of 1962) or a trust company which is a subsidiary of such bank or a central depository company approved by the Commission or an NBFC carrying out investment finance services provided it has been approved by the Commission to act as custodian or such other company as may be approved by the Commission to act as custodian;”;
- (x) “Deposit” means any deposit of money with, or any money borrowed or raised by an NBFC, but shall not include,-
  - (a) redeemable capital issued under section 120 of the Ordinance;
  - (b) finance obtained from a financial institution;
  - (c) advance, application or subscription money for shares in the NBFC;
  - (d) cash margin or security deposit received in respect of finance provided by NBFC;
  - (e) subordinated loans; and
  - (f) finance obtained from major shareholders, sponsors, and associated companies:Provided that the Commission shall be the final authority to determine, by an order in writing, whether any money deposited, raised or borrowed falls under the definition of deposit or otherwise;
- (xi) “equity” includes paid up ordinary share capital, preference shares which are compulsorily convertible into ordinary shares, general reserves, statutory reserves, balance in share premium account, reserve for issue of bonus shares, subordinated loans and unappropriated profits, excluding accumulated losses.

Explanation.-

- (i) Surplus on revaluation of fixed assets as described in section 235 of the Ordinance, treasury stocks, intangible assets, deferred tax reserves, and surplus on revaluation of investments shall not be included in the equity.

(ii) A loan may be classified as subordinated loan if it complies with the following conditions:-

(a) subordinated loan can be raised from any person, preferably from the sponsors;

(b) rate of profit on subordinated loan, if any shall be decided by NBFC subject to the clearance of the Commission;

(c) neither the interest nor the principal shall be paid even at maturity if such payment would result in non-compliance with the equity or capital adequacy requirements;

(d) subordinated loan shall be un-secured and sub-ordinate to all other indebtedness including deposits;

(e) subordinated loan shall be in the form of cash or liquid assets only;

(f) auditor certificate evidencing injection of funds into NBFC as subordinated loan;

(g) minimum tenor of subordinated loan shall be specifically mentioned; and

(h) prior approval of the Commission is required for repayment of subordinated loan.

(iii) For the purpose of calculating minimum equity requirements for licensing purposes, the exposure of an NBFC in its subsidiaries and strategic investments shall be deducted from equity:

Provided that the equity investment in subsidiary and strategic investment shall be taken at cost.

(xii) finance" means provision of,-

a. any accommodation or facility on the basis of participation in profit and loss, musharika or modaraba basis, mark-up or mark-down in price, hire-purchase, lease, rent-sharing, bills of exchange, promissory notes or other instruments with or without buy-back arrangement by a seller, participation term certificate, musharika or modaraba certificate, term finance certificate;

(ii) guarantees, indemnities, letters of credit or any other financial engagement, issued or undertaken on behalf of a person, with a corresponding obligation of that person;

(iii) a loan, advance, discounting services to any person;

(iv) micro financing including any form of finance such as leases advances, consumer loans, housing finance;

(v) a financial facility or accommodation provided on the basis of Islamic mode of financing; and

(vi) any other form of financial facility provided to a person;

(xiii) **“financial services company”**

for the purposes of these rules, means a financial institution incorporated in Pakistan or outside Pakistan, insurance company, broker i.e. of stock market or money market or commodities market; a company which is primarily involved in distribution of securities, insurance products and units or certificates of a notified entity, and any other company as notified by the Commission in the official Gazette;

(xiv) **“group”** means persons, whether natural or legal, if one of them or his close relatives, in case of a natural person, or, its subsidiary or associated company, if it is a legal person, have control or hold [direct or indirect] substantial ownership interest or have power to exercise significant influence over the other. For the purpose of this clause the expression-

(a) subsidiary shall have the same meaning as defined in sub-section (2) of section 3 of the Ordinance;

(b) control shall have the same meaning as defined [Securities Act, 2015 (III of 2015)];

(c) substantial ownership means beneficial shareholding of ten percent by a person or by close relative; and

(d) “significant influence” refers to the management control of the company or the ability to participate in financial [operational and risk management policies, either exercised by representation on the Board of Directors, through partnership or by statute or by agreement in the policy making process;

(xvi) **“major shareholder”** means a person who, individually or in concert with his family or a part of a group, holds ten percent or more shares having voting rights of the paid-up capital of the company;

(xvii) **“NBFC”** means a non-banking finance company as defined in clause (a) of section 282A of the Ordinance;

(xviii) **“net assets”**, in relation to a collective investment scheme, means the excess of assets over liabilities of the collective investment scheme, such excess being

computed in the manner specified by the Commission by notification in the official Gazette;”

- (xix) “Ordinance” means the Companies Ordinance, 1984 (XLVII of 1984);
- (xx) "person" includes an individual, a Hindu undivided family, a firm, an association or body of individuals whether incorporated or not, a company and every other legal person;
- (xxi) “promoter or sponsor” mean a person who has made an application to the Commission to form an NBFC under rule 4 and has contributed initial capital in the proposed company or a person who replaces him;
- (xxii) “records” mean all documentary and electronic materials created, generated, sent, communicated, received or stored, regardless of physical form or characteristics;
- (xxiii) “regulations” means the regulations made by the Commission in exercise of its powers under Part VIIIA of the Ordinance;
- (xxiv) “Schedule” means the schedule to these rules;
- (xxv) strategic investment” means an investment which an NBFC makes with the intention to hold it for a period of minimum 5 years and is more than 10% of its equity;
- (xxvi) “trust” means a trust established by a deed under the provisions of the Trusts Act, 1882(II of 1882);
- (xxvii) “trustee” includes a bank licensed under the Banking Companies Ordinance, 1962 (LVII of 1962) or a trust company which is a subsidiary of such a bank or a central depository company approved by the Commission or a NBFC carrying out investment finance services provided it has been approved by the Commission to act as trustee or such other company or trust as may be approved by the Commission to act as trustee;

Words and expressions used but not defined in these rules shall have the same meanings assigned to them in the Ordinance or the Securities and Exchange Ordinance, 1969 (XVII of 1969).

### **3.2 Eligibility criteria for the establishment of a NBFC**

A NBFC may be established, if each of its promoters, proposed directors, chief executive and chairman of the Board of Directors fulfills the terms and conditions mentioned in the **fit and proper criteria. (see Annexure I)**

## ANNEXURE-I

**SCHEDULE – IX****FIT AND PROPER CRITERIA**

[see Rule 3 and Regulations 2 (1) (xvii) and 10]

**Fit and Proper Criteria****APPLICATION AND SCOPE**

- (1) The Fit and Proper Criteria in relation to an NBFC and Investment Company is applicable to the following persons:
  - (i) promoters and major shareholders of the NBFC and Investment Company;
  - (ii) director of the NBFC and Investment Company;
  - (iii) chief executive of the NBFC and Investment Company;
  - (iv) Key Executives of the NBFC and Investment Company.
- (2) A proposed director or chief executive of the NBFC and Investment Company shall not assume the charge of office until their appointment has been approved by the Commission.
- (3) The application for seeking approval of the Commission under clause (2) shall be submitted by the NBFC and Investment Company along with the requisite information required under Annexure “A” and an Affidavit as specified in Annexure “B”.
- (4) The appointment of Key Executives of an NBFC and Investment Company does not require the approval of the Commission; however an NBFC and Investment Company shall ensure at the time of appointing a Key Executive that such person qualifies the Fit and Proper Criteria.
  - (a) Integrity and track record of such person;
  - (b) Financial soundness of such a person;
  - (c) Competence and capability of the person; and



(d) Conflict of interest of such person with the business of the NBFC and Investment Company.

Provided that 5(c) and (d) may not be considered while assessing the fitness & propriety of promoters and major shareholder of the NBFC and Investment Company.

Provided further that in case the sponsor and major shareholder is a body corporate, in addition to the relevant/ applicable clauses, corporate behavior of the said body corporate and its sponsors shall be duly considered.

(6) The Fit and Proper Criteria is perpetual in nature and an NBFC, Investment Company shall ensure compliance with the provisions of Fit and Proper Criteria.

(7) The NBFC and Investment Company shall within 30 days of the close of each calendar year submit the following documents with regard to its chief executive and directors:

(a) Updated resume;

(b) CIB reports of the chief executive and directors and the companies, firms, sole proprietorships, etc. where they are acting as directors, chief executives, partners or owners; and

(c) Latest tax returns.

(8) All persons subject to Fit and Proper Criteria shall report any change with reference to their fitness and propriety to the respective NBFCs and Investment Company within three business days of such change taking effect and NBFCs shall within a period of seven business days from the date of receipt, report the same to the Commission.

(9) NBFC and Investment Company shall monitor whether any change in the status of its chief executive, directors and key executives is contrary to the requirements of the Fit and Proper Criteria. In case of any change in status result in non-compliance with the Fit and Proper Criteria, the NBFC and Investment Company shall immediately stop the person from performing his assigned functions, informs the Commission and initiate the process for replacement of the individual with a fit and proper individual.

(10) Any violations or circumvention of the Fit and Proper Criteria shall be dealt with under the provisions of the Ordinance.

The fitness and propriety of any person shall be assessed by taking into account all the relevant factors including but not limited to the following: **Assessment of Fit and Proper Criteria.**

**1. Integrity and Track Record.**

A person shall not be considered Fit and Proper if he:

1. has been convicted of an offence involving moral turpitude;
2. has been involved in the mismanagement of investments, financial or business misconduct, fraud, etcetera;
3. has been the subject to adverse findings, after conducting an inquiry, by the Commission or any other regulatory or professional body or government agency;
4. has been actively involved in the management of a company or firm whose registration or license has been revoked or cancelled or which has gone into liquidation or other similar proceedings due to mismanagement of affairs, financial misconduct or malpractices;
5. is ineligible, under the Ordinance or any other legislation or regulation, from acting as a director or serving in a managerial capacity of an NBFC or a company;
6. has entered into a plea bargain arrangement with the National Accountability Bureau;
7. in case of promoters or major shareholder of NBFC, does not have the requisite disclosed and verifiable financial resources; and
8. In case of promoters or major shareholders of NBFC, does not have an established and proven track record of successfully running a business enterprise for 3 to 5 years, preferably a public listed company.

**2. Financial Soundness**

In determining a person's financial soundness, the following shall be considered:

1. whether such person's financial statements or record including wealth statements or income tax returns or assessment orders are available;
2. whether the person has been declared by a court of competent jurisdiction as defaulter in repayment of loan to a financial institution exceeding Rupees one million;
3. whether the latest Credit Information Bureau report of the person shows overdue payments or default to a financial institution;
4. whether the person has applied to be adjudicated as an insolvent and his application is pending;
5. whether the person is an un-discharged insolvent; and
6. Whether the person has been declared a defaulter by a stock exchange.

### **3. Competence and Capability**

In determining a person's competence and capability the following shall be considered:

1. the directors should be individuals having management or business experience of at least five years at a senior level;
2. the directors shall have experience and knowledge in any profession such as banking, Collective Investment Scheme, accounting, law, internal audit or information technology etc.;
3. the chief executive should have a minimum experience of seven to ten years in a senior management position, preferably in the regulated financial services sector;
4. the chief executive should have demonstrated, through his qualification and experience, the capacity to successfully undertake the cognate responsibilities of the position; and
5. The key executives must be qualified professionals possessing relevant experience and certification relating to the job or assignment.

### **4. Conflict of interest**

The directors or chief executive of NBFC shall not:

1. be a director in any other NBFC engaged in a similar business in Pakistan: Provided that this condition shall not apply to nominees of the Federal or Provincial Governments on the board of any NBFC;
2. be a director, chief executive, chief financial officer, chief internal auditor, research analyst or a trader (by whatever name or designation called) in a stock brokerage house or in any company or entity owned and controlled by a member of a stock exchange;
3. be a member of a stock exchange engaged in the business of brokerage or is a spouse of such member or in control of more than 20% shareholding, directly or indirectly through his close relatives.
4. in case of Key Executives, the NBFCs must ensure that no Key Executive shall head more than one functional area that give rise to conflict of interest within the organization. For example, the departments of audit and accounts shall not be headed by the same person.
5. further, a key executive shall not hold directorship in his or her personal capacity:
  - 5.1 in a business concern which is also a client of the NBFC, and
  - 5.2 in any other financial institution.

#### **Key Executives**

- a. Any executive, officer acting as second to chief executive officer including chief operating officer or by whatever name called;
- b. any person responsible for heading any specific licensed form of business
- c. chief financial officer, head of accounts or head of finance;
- d. head of internal audit;
- e. head of information technology;
- f. head of credit or risk management;
- g. head of human resource;
- h. head of operations;
- i. head of marketing/sales;
- j. head of research;
- k. head of treasury;
- l. chief investment officer;
- m. head of law, company secretary or compliance officer;
- n. fund manager; and
- o. any other functional responsibility which the Commission may include.

#### **4 NBFC (ESTABLISHMENT AND REGULATIONS) RULES, 2003**

##### **4.1 Permission to Form NBFC**

1. Any person desirous of forming an NBFC or to undertake any form of business shall file an Application along with specified non-refundable fee to Commission.
2. Commission may accord the approval if it is satisfied that the NBFC is capable of being registered as NBFC as per rules and the persons requiring such approval have complied with the regulations in this regard..
3. The permission shall be for a period of six months and during this period the NBFC shall be registered as a public limited company. The period may be extended by SECP for maximum of a 3 months period.

##### **4.2 Conditions for Grant of a license.**

The Commission, after making necessary inquiries, is satisfied that the company has fulfilled the criteria and that the promoters

1. are persons of means and integrity and;
2. have knowledge of matters which the company may have to deal with.

Shall grant license to such company for one or more of the forms of businesses subject to compliance of the following conditions, namely:-

1. the company fulfils the eligibility criteria as given in schedule I (Attached at the end of chapter);
2. the company is not part of a group of companies already holding a license for the same form of business;
3. the company has minimum equity as may be specified by the Commission in respect of each form of business;
4. the company has allotted at least twenty five percent of the paid-up share capital to the promoters;
5. the company's promoters or majority shareholders and directors 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; provided that the directors holding qualifying shares up to 2 percent of the share capital shall not be required to comply with this requirement.

6. the company's promoters or majority shareholders and directors 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 provided that the directors holding qualifying shares up to 2 percent of the share capital shall not be required to comply with this requirement;
7. the company appoints its chief executive who does not hold such office in any other company except for an investment company being managed by the said company, provided that prior approval of the Commission has been obtained in this regard;
8. the company has given an undertaking that no change in the Memorandum of Association, other than increase in the authorized share capital, shall be made without prior approval of the Commission;
9. the company has given an undertaking that the conditions as set out in these rules, the regulations or prudential regulations or any direction given by the Commission shall be duly complied with;
10. the company obtaining licences for multiple forms of business or any company undertaking any form of business as an ancillary activity must have, other than chief executive, at least one person responsible for heading each licenced form of business;
1. the company has furnished an undertaking that within ninety days of the grant of certificate of registration it shall furnish evidence to the satisfaction of the Commission that the personnel employed by it for executive positions, research or other related functions possess sufficient educational qualifications and professional experience to undertake the proposed form of business of the NBFC; and
2. Commission may impose certain additional conditions at the time of granting the license.

#### **4.3 Other Requirements**

1. Separate applications shall be made for grant of a license to undertake each form of business if the company wishes to take up more than one business.
2. A fund management NBFC shall not be eligible for seeking licence for any form of business allowed to lending NBFC and a lending NBFC shall not be eligible for seeking licence for any form of business allowed to fund management NBFC.
3. The Commission may issue a licence for asset management services to manage only closed end fund. Licence granted to an NBFC for investment finance services shall be valid for undertaking leasing, housing finance services and discounting services and such an NBFC shall not be required to obtain separate licences for each form of business i-e., leasing, housing finance services and discounting services specified in these rules.

4. Every other person engaged in any form of business shall within a period of six months of coming into force of these rules apply in writing to the Commission, for grant of a licence along with a non-refundable processing fee as specified by the Commission by notification in the official Gazette.

#### **4.4 Validity of License**

1. The license granted to the NBFC shall be valid for three year from the date of its issuance and shall be renewable upon expiry of the said period.
2. The Commission may renew the license of such NBFC, for three year on such conditions, and after such inquiry as it may deem necessary: Application for renewal must be received atleast one month prior to the cancellation of the license.

Provided that till such time that the license is renewed, the existing license shall be deemed valid for the purposes of these rules and the regulations unless the company fails to apply and fulfill all the requirements to the satisfaction of the Commission for the grant of a license:

Provided further that if the company fails to apply within the stipulated time period and fulfill all the requirements to the satisfaction of the Commission its license shall stand cancelled and the Commission may initiate further proceedings to give effect to the cancellation.

#### **4.5 Commencement of Business by NBFC**

1. An NBFC shall commence or continue its business and operations only after it has complied with the requirements of these rules and the regulations and has been issued a license to carry out a form of business.
2. The Commission may, subsequent to the grant of license to the NBFC, impose any other condition, as it may deem necessary in the public interest.
3. If an NBFC fails to commence business within one year of the issuance of license, the license shall be deemed to be cancelled or otherwise as specified by the Commission by notification in the official Gazette.

#### **4.6 Condition Applicable to NBFC**

An NBFC shall

1. maintain such books of accounts and other records, as prescribed under the Ordinance, as shall depict a true and fair view of its state of affairs, including,
  - a. journals, cash books and other records of original entry forming the basis of entry in any ledger;
  - b. ledgers reflecting assets, liabilities, income and expenses along with all supporting documents or records;
  - c. ledgers showing securities in the portfolio;
  - d. record of transactions with banks;
  - e. record of the meetings of the board of directors and all relevant committees including the audit committee, credit committee and investment committee; and
  - f. original record of all reports, analysis and memoranda containing investment advice distributed;
  - g. maintain such books of accounts and other records, as prescribed under the Ordinance, to depict a true and fair view of its state of affairs for a period of not less than ten years;
1. maintain such books of accounts and other records, as prescribed under the Ordinance, to depict a true and fair view of its state of affairs for a period of not less than ten years
2. ensure that its statutory auditors are appointed from the approved list of auditors circulated by the Commission;
3. appoint an individual, having minimum three years' experience, as its financial or chief accounting officer who is-
  - (i) a chartered accountant; or
  - (ii) a cost and management accountant; or
  - (iii) a member of a recognized foreign accountancy organization; or
  - (iv) a person having master's degree in commerce or business administration with specialization in finance;

Provided that a non-deposit taking and unlisted lending NBFC may designate another officer as its financial or chief accounting officer
4. appoint as internal auditor;
  - (i) a person having minimum three years' experience as internal auditor who is-
    - (a) a chartered accountant; or



- (b) a cost and management accountant; or
  - (c) a certified internal auditor; or
  - (c) a certified information system auditor; or
  - (d) a member of a recognized foreign accountancy organization; or
  - (e) an individual having master's degree in commerce or business administration with specialization in finance; or
  - (ii) a chartered accountancy firm having satisfactory Quality Control Review (QCR) and not being the statutory auditors to whom this function is outsourced;
- Provided that the internal auditor shall report directly to the board of directors or the audit committee of the board of the NBFC
5. appoint a person as compliance officer to ensure reporting to the Commission of status of compliance with the existing regulatory framework by the NBFC;
  6. appoint such executives who shall fulfill the terms and conditions mentioned in the fit and proper criteria specified by the Commission by notification in the official Gazette;
  7. appoint the directors in accordance with Schedule I, provided that the Commission shall be the final authority to determine the status of a director as independent or otherwise
  8. prepare its accounts in conformity with the International Accounting Standards and Companies Ordinance and technical releases issued by Institute of Chartered Accountants of Pakistan from time to time;
  9. furnish to the Commission its quarterly and annual financial statements as per requirements of schedule I;
  10. follow directions issued to protect NBFCs against their involvement in money laundering activities and other unlawful trades;
  11. obtain rating in accordance with Schedule-I]57 as and when it becomes eligible for rating as per the rating criteria of a rating agency registered with the Commission, and such rating shall be updated at least once every financial year: Provided that the NBFC shall within one year of the decrease in its rating from the grade specified by the Commission by notification in the official Gazette, obtain a fresh rating and during the period that its rating is below the grade so specified, the NBFC may be allowed by the Commission to continue its operations on such conditions as are deemed appropriate by the Commission:
  12. publish the credit rating and management quality rating, as the case may be, in its annual report and quarterly reports, annual and quarterly reports of the collective

investment schemes managed by the NBFC, if applicable, and any advertisement and brochures in relation to promotion of its business; and

15. acquire and maintain membership of the relevant association and follow the code of conduct specified by the said association approved by the Commission.
16. seek registration of notified entities as per the regulations notified by the Commission in the Official Gazette before offering of unit, certificates or shares of notified entities:

#### 4.7 An NBFC shall not:

1. appoint as directors persons who hold such office in any other NBFC licensed for the same form of business:

Provided that this clause shall not apply to the nominees of the Federal or Provincial Governments on the board of any NBFC or, any exception specified by the Commission;

2. appoint or change its chief executive or any of its directors subject to fulfillment of the fit and proper criteria and prior approval of the Commission provided that the Commission may refuse appointment of any person;

**Explanation.** - This clause shall not apply to a director nominated by the Federal Government or Provincial Governments;

3. enter into premises leasing or renting, and sale or purchase of any kind with their directors, officers, employees or their close relatives or any person acting on their behalf or such persons who either individually or in concert with family members beneficially own 10% or more of the equity of the NBFC:

Provided that this restriction shall not apply to such NBFCs that have a policy to this effect duly approved by their board of directors:

Provided further that in case of any sale and purchase to the directors the prior approval in writing of the board, excluding the participation of the beneficiary directors, is required

4. hold or make investment in a subsidiary other than that which is a financial services company: provided that an NBFC may make strategic investment in financial services company.
5. form, sell or transfer ownership of shares in subsidiary or associated company, merge with, acquire or takeover any other company unless it has obtained prior approval of the Commission in writing to such formation or sale or transfer;
6. sell strategic investment unless it has obtained prior approval of the Commission in writing to such sale

7. merge with, acquire or takeover any other company unless it has obtained prior approval of the Commission in writing to such scheme of merger, acquisition or takeover;
8. remove any of its records or documents relating to its business from Pakistan to a place outside Pakistan without the prior permission of the Commission
9. enter into transactions with any broker which exceed ten percent of the total brokerage expense of the NBFC in any one accounting year:

Provided that the NBFC shall not have a common director or officer or employee with the broker;

10. remove any of its records or documents relating to its business from Pakistan to a place outside Pakistan without the prior permission of the Commission;
11. make aggregate investment in shares of unlisted company in excess of twenty percent of its equity. Investment in unlisted company shall be approved in a board meeting after carefully analyzing the merits and financial impact of the investment and recording the decision in detail in minutes of the meeting and such decisions shall be communicated to the Commission within fourteen days of the board meeting along with copy of the minutes:  
Provided that the NBFC shall not own shares of any one unlisted company in excess of ten per cent of its own equity or of the issued capital of that company, whichever is less:

Provided further that investment by an NBFC out of its surplus equity (i.e. over and above the required minimum equity requirements) in unlisted shares of its subsidiaries or any other financial services company in the group, shall not be taken into account for calculating the limit for unquoted shares;

12. offer any of its own or other securities for any consideration other than cash or liquid assets nor make any loan or advance against these securities. Unless otherwise specified by the Commission by notification in the official Gazette;
13. hold, deal or trade in real estate except for the use of NBFC itself or where specified by the Commission by notification in the official Gazette; Provided that properties acquired by lending NBFC in satisfaction of its claims shall be disposed of within a maximum period of seven years from the date of acquisition;
14. raise deposits in any form except as specified by the Commission in NBFC Reg 2008.;
15. provide unsecured facilities or exposures except as specified by the Commission by notification in the official Gazette;
16. encumber or mortgage or pledge or transfer clients' assets deposited as security with the NBFC against any facility extended to the client, for securing its own obligation; and

17. undertake the brokerage business in capital market except by forming a separate company for this purpose:

Provided that the NBFCs already engaged in brokerage business shall comply with this requirement within a period of one year of coming into effect of this provision.”

**4.8 Opening or closure of bank account, account with a broker or branch.-**

Opening or closure of any bank accounts, account with a broker or branches of an NBFC shall be informed to board meeting by the board of directors of the NBFC and recorded in the minutes of the meetings.

**4.9 Insurance Coverage.** An NBFC shall obtain sufficient insurance coverage on its own or for its clients’ benefit against any losses that may be incurred as a result of employee’s fraud or gross negligence.

Such insurance coverage shall be mentioned in the quarterly and annual financial statements.

**4.10 Exchange Fluctuation Risk.** An NBFC shall make satisfactory arrangement to insulate itself from exchange fluctuation risks associated with foreign currency obligations and transactions.

**ANNEXURE TO FORM-I**  
[see rule 4]  
**INFORMATION TO BE SUPPLIED FOR OBTAINING**  
**PERMISSION TO FORM A NON – BANKING FINANCE COMPANY**  
**AND SUBSEQUENT CHANGE IN DIRECTORSHIP AND CHIEF**  
**EXECUTIVE**

1. Full name, former name if any, father's or husband's name, nationality, residential and business address, national tax number, present occupation of each sponsor, proposed director, proposed chief executive and proposed chairman of the Board. (Institutional sponsors shall mention their names and addresses only instead of giving all these particulars of their nominee directors).
2. 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, partners or office holders during the last ten years. Copies of annual accounts of such companies and firms for the last three years alongwith summary of their paid-up share capital, free reserves, profit after tax and dividend payment to be provided.
3. Financial standing, educational as well as professional qualifications and experience of persons mentioned in paragraph 1 above, supported by documentary evidence.
4. Percentage of capital, each sponsor proposes to contribute in the proposed company.
5. Feasibility report of the proposed company.
6. Evidence of payment of income tax and wealth tax by the sponsors in individual capacity as well as by the companies, firms, etc., wherein they are or have been directors during the preceding one year.
7. Net-worth certificate of each sponsor supported by a duly authenticated copy of the latest wealth statement filed with the taxation department. In the case of sponsors or directors residing in countries where filing of wealth statement is not the requirement of law, a certificate of personal net-worth and general reputation issued by a bank of international repute shall be acceptable.
8. Names of the bankers of the sponsors alongwith their account numbers.
9. Draft of the Memorandum and Articles of Association.
10. Affidavit from each person mentioned in paragraph 1 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).
11. Latest CIB report in respect of sponsors (individuals and institutions) as an evidence for statement in clause (b) of paragraph 10

Conditions Applicable to an NBFC

Eligibility Criteria					Rating	Submission of financial statements
Forms of business	Type of company	Minimum number of directors	Number of independent directors	Number of directors with relevant experience of at least five years at a senior management level for a particular form of business		
1	2	3	4	5	6	7
Leasing Housing Finance Services Investment Finance Services Discounting services (Lending NBFC without deposit taking permission)	i) Any form of company incorporated as NBFC in accordance with criteria mentioned in rule 4. ii) Any existing company engaged in these forms of business. iii) Any other company as approved by the Commission	2 or minimum number of directors stipulated in the Ordinance, whichever is higher	1 or one third, whichever is higher	(i) 1 director, if number of directors including chief executive is less than or equal to three  (ii) 2 directors, if number of directors including chief executive is greater than 3	N/A	As per requirements of the Ordinance

	on					
i) Leasing ii) Housing Finance Services iii) Investment Finance Services iv) Discounting services (Lending NBFC with deposit taking permission)	Listed company which was incorporated as an NBFC in accordance with criteria mentioned in rule 4 and complies with the conditions mentioned in the Regulations for raising Deposit.	Minimum number of directors as stipulated in the Ordinance	2 or One third, whichever is higher	2 directors excluding chief executive	Credit Rating	As per requirements of the Ordinance
Investment advisory services	i) A public limited company incorporated as NBFC as per the rule 4. ii) An existing fund management NBFC	Number of directors stipulated in the Ordinance,	One third	(i) 1 director, if number of directors including chief executive is three  (ii) 2 directors, if number of director, including chief executive is greater than 3	Management quality rating	As per requirements of the Ordinance
Private Equity and Venture Capital Management Services	i) Any form of company incorporated as NBFC as per the rule 4. ii) An existing fund managem	Number of directors stipulated in the Ordinance,	One third	(i) 1 director, if number of directors including chief executive is three  (ii) 2 directors, if number of director,	Management quality rating	As per requirements of the Ordinance



	ent NBFC			including chief executive is greater than 3		
Asset management services	<p>i) A public limited company incorporated as NBFC as per the Rule 4.</p> <p>ii) An existing fund management NBFC with a valid investment advisory services licence and minimum 5 years' experience</p>	Number of directors stipulated in the Ordinance,	One third	<p>(i) 1 director, if number of directors including chief executive is three</p> <p>(ii) 2 directors, if number of director, including chief executive is greater than 3</p>	Management quality rating	As per requirements of the Ordinance
REIT management services	<p>i) A public limited company incorporated as NBFC as per the Rule 4</p> <p>ii) An existing fund management NBFC</p> <p>iii) A public limited company</p>	Number of directors stipulated in the Ordinance,	One third	<p>(i) 1 director, if number of directors including chief executive is three</p> <p>(ii) 2 directors, if number of director, including chief executive is greater than 3</p>	Management quality rating	As per requirements of the Ordinance

	which is primarily engaged in the business of real estate development.					
Pension fund scheme business	<p>i) A fund management NBFC with a valid asset management services licence and minimum 3 years' experience of managing multiple types of collective investment schemes</p> <p>ii) A life insurance company with a valid licence and minimum 3 years' experience</p>	Minimum number of directors as stipulated in the Ordinance.	One third	<p>(i) 1 director, if number of director, including chief executive, is 3</p> <p>(ii) 2 director, If number of director, including chief executive, is greater than 3</p>	Management quality rating	As per requirements of the Ordinance

**Schedule II**  
[See rule 10 B]

**Exemption from Certain Rules to specified Companies**

Sr. No.	Type of Company	Exemption
1.	Companies other than Financial Institutions undertaking activities of lending NBFCs as an ancillary business	(i) Clauses (a), (b), (c), (d), (e), (f), (g) and (h) of sub-rule 6 of Rule 5 (ii) Clauses (a), (b), (ba), (c), (ca), (cc), (cd), (h), (i) and (j) of sub-rule 1 of Rule 7 (iii) Clauses (a), (aa), (b), (ba), (c), (ca), (cb), (h), (i), (j) and (l) of sub-rule 2 of Rule 7 (iv) Sub-rule 3 of Rule 7 (v) Rule 8 (vi) Rule 9

## 5. NBFC AND NOTIFIED ENTITIES REGULATIONS, 2008

### 5.1 Classification and Provisioning for non-performing assets.

#### Non-Performing Assets

“A debt obligation where the borrower has not paid any previously agreed upon interest and principal repayments to the designated lender for an extended period of time. The non-performing asset is therefore not yielding any income to the lender in the form of principal and interest payments.

A mortgage in default would be considered non-performing. After a prolonged period of non-payment, the lender will force the borrower to liquidate any assets that were pledged as part of the debt agreement. If no assets were pledged, the lenders might write-off the asset as a bad debt and then sell it at a discount to a collections agency”.

#### Regulation 25.

Applicable to

- a. Leasing Company;
- b. Investment Finance Company; and
- c. Housing Finance Company.

Above NBFC shall observe the criteria for classification of its assets and provisioning as provided in Schedule XI.

#### 5.1.1 Subjective Evaluation and its Basis

1. In addition to above referred criteria subjective evaluation of performing and non-performing advances, loans and lease port-folio shall be made for risk assessment by NBFC;
2. Classification of such assets and provisioning required against them shall be determined keeping in view the risk involved and the requirements of the International Accounting Standards:

Provided that such evaluation shall be carried out on the basis of adequacy of security inclusive of:

- a) its realizable value;
- b) cash flow of the Borrower or lessee;
- c) operations in the account; and

- d) records covering advances and credit worthiness of the Borrower or Lessee.

**5.1.2 Change of classification status of a facility**

1. The status of classification of a rescheduled or restructured non-performing Facility shall be changed only
  - a) when the terms and conditions of the rescheduled or restructured Facility are fully met for a period of at least six months (excluding grace period, if any) from the date of such rescheduling or restructuring;
  - b) when at least 20% of the outstanding amount is recovered in cash; and
  - c) However the condition of six months retention period shall not apply if the Borrower repays or adjusts at least 50% of the restructured or rescheduled loan amount in cash.

**5.1.3 Status of Facilities in reports to Commission**

1. An NBFC shall ensure that the status of classification and provisioning of a rescheduled or restructured non-performing Facility is not changed in its reports to the **Commission** merely due to rescheduling or restructuring of a Facility and rescheduled or restructured
2. Rescheduled or restructured loans shall be reported to the Credit Information Bureau as such and not as default.

**5.1.4 Status of Facilities on Subsequent default**

Where the Borrower subsequently defaults (either on principal or mark-up) after the rescheduling or restructuring of the non-performing Facility the NBFC shall classify the loan or lease in the same category as it was in at the time of rescheduling or restructuring.

**5.1.5 Provisioning and Reclassification/Restructuring**

1. At the time of rescheduling or restructuring an NBFC shall re-consider and re-examine the viability of the project or business and shall accordingly secure its interests.
2. An NBFC shall classify its loans, advances or lease portfolio and make provisions in accordance with the time-based criteria prescribed in Schedule XI.
3. Before making any provision an NBFC may avail the benefit of leased assets, or additional collaterals held against lease, or collaterals held against advances or loans, it can consider the realizable value of mortgaged or pledged or leased or collaterally held assets for deduction from the outstanding principal amount of loans or advances or lease against which such assets are leased, mortgaged, pledged or collaterally held.

4. Non-performing Facility against which security or in case of lease, additional security is not available, or where mortgaged, pledged or leased assets have not been valued and verified by external auditors, such Facility shall continue to be classified and provided for according to the time-based criteria prescribed in Schedule XI.

**Explanation:** - The value of the mortgaged, pledged assets, **other than Liquid Assets**, to be considered for this purpose shall be the FSV and the FSV once determined, shall remain valid for three years from the date of the valuation during which period the underlying collateral or leased assets will not be revalued for provisioning purpose. Also the adjustment factors of 80%, 70% and 50% shall be applied on the value so determined for the purpose of determining provisioning requirement in 1st, 2nd and 3rd year of valuation, respectively. Thereafter, the assets shall be revalued and the adjustment factor of 50% shall be applied for all subsequent years.

The FSV of the collateral shall be restricted to fresh revaluation or previous value, whichever is less. In case of NBFCs, licensed by the Commission to undertake housing finance services, FSV once determined, shall remain valid for a period of ten years from the date of valuation and an adjustment factor of 70% shall be applied on the value so determined for the purpose of determining provisioning requirement in respect of housing finance for the said period.

#### 5.1.6 Criterion

NBFCs shall observe the following criteria for determining the realizable value of mortgaged, pledged, leased or collaterally held assets, namely:-

1. only assets having registered mortgage, equitable mortgage (where NOC for creating further charge has not been issued by NBFC) and pledged or collaterally held assets shall be considered;
2. assets having pari-passu charge shall be considered on proportionate basis;
3. hypothecated assets and assets with second charge or floating charge shall not be considered;
4. valuations shall be carried out by an independent professional valuer listed on the panel of valuers maintained by the Pakistan Banks Association or the Leasing Association of Pakistan;
5. the valuers while assigning any values to the mortgaged, pledged, leased or collaterally held assets, shall take into account all relevant factors affecting the salability of such assets including any difficulty in obtaining their possession, their location, their condition and the prevailing economic conditions in the relevant sector, business or industry;

6. the realizable value of mortgaged, pledged, leased or collaterally held assets determined by the valuers must take into account the amount that can be realized from the asset if sold in a forced or distressed sale condition;
7. the valuers shall in their report explain the assumptions, calculations, formula and method adopted in determination of the realizable values;
8. valuations shall be conducted at least once in three years:

Provided that, except for a Housing Finance Company, if a valuation is older than three years, a fresh revaluation shall be done failing which the valuation shall be taken as nil.

**25A. Creation of General Provision against micro finance portfolio:-** The NBFCs with micro finance portfolio shall maintain a General Provision equivalent to 0.5% of the net outstanding micro finance portfolio (Finance net of specific provisions) provided that general provision shall not be required in cases wherein Finance is secured against liquid assets with appropriate margins



**5.1.7 Categories and Valuations**

The categories of mortgaged, pledged, leased or collaterally held assets which are considered for valuation and the discounting factors to be applied shall be as under and no other assets shall be taken into consideration:

**5.1.8 Liquid Assets:**

Valuation of Liquid Assets shall be determined by the NBFC and verified by the external auditors. Explanation:- Values of pledged shares of a listed company shall be taken at their market value on the balance sheet date and as per method, if any, specified by Institute of Chartered Accountants of Pakistan. More over valuation of shares pledged against financing shall be considered only if they have been placed in CDC, otherwise they shall not be admissible as a liquid asset.

**5.1.9 Pledged Stocks:**

In the case of pledged stocks of perishable and nonperishable goods,-

1. the FSV provided by valuers shall not be older more than six months, at each balance sheet date;
2. the goods shall be perfectly pledged, the operation of the godowns shall be in control of the NBFC;
3. regular and valid insurance and other records should be available; and
4. in case of perishable goods, the valuers should also give the approximate date when these are expected to be of no value.

**5.1.10 Auditors Checking**

1. The values of mortgaged, pledged, leased or collaterally held assets determined by the valuers shall be subject to verification by the external auditors, who may reject cases of valuation, which in their opinion -
  - (a) Do not appear to have been professionally carried out and values determined are unreasonable, or
  - (b) Are not backed by valid documentation of mortgage, pledge, leased or collaterally held asset, and are not supported by legal opinion wherever required.
2. Further the external auditors as a part of the annual audit of the NBFC shall verify that all requirements under these Regulations or any other circular issued by the Commission for classification of assets and determination of provisions required against them have been complied with.

**5.1.11 Quarterly Review by NBFC**

An NBFC shall review, at least on a quarterly basis, the recovery of their loans, advances and lease portfolio and shall properly document the evaluations so made:

Provided that shortfall in provisioning, if any, determined as a result of quarterly assessment, shall immediately be provided in the books of accounts by the NBFC.

[SCHEDULE – X  
[see Regulation 25]

(a) For all Financing Facilities Other Than Micro Finance

Classification	Determinant	Treatment of income	Provisions to be made
(1)	(2)	(3)	(4)
OAEM	Where installment, mark-up, interest, profit or principal is overdue by 90 days or more from the due date.	Unrealized mark-up, interest or profit to be put in Suspense Account and not to be credited to Income Account except when realized in cash.	
Substandard.	Where installment, mark-up, interest, profit or principal is overdue by 180 days or more from the due date.	As above	Provision of 25% of the difference resulting from the outstanding balance of principal against the facility less the amount of Liquid Assets realizable without recourse to a Court of Law and adjusted FSV of mortgaged, pledged, leased or collaterally held assets as valued by valuers fulfilling prescribed eligibility criteria, in accordance with the requirements provided in Regulation 25.
Doubtful.	Where installment, mark-up, interest, profit or principal is overdue by one year or more from the due date.	As above.	Provision of 50% of the difference resulting from the outstanding balance of principal against the facility less the amount of Liquid Assets realizable without recourse to a Court of Law and adjusted FSV of mortgaged, pledged, leased or collaterally held assets as valued by valuers fulfilling prescribed eligibility criteria, in accordance with the requirements provided in Regulation 25.

Loss.	Where installment, mark-up, interest, profit or principal is overdue by one and half year or more from the due date.  (b) Where financial instruments discounted are not paid or adjusted within 180 days of the due date.	As above.  As above.	Provision of 100% of the difference resulting from the outstanding balance of principal against the facility less the amount of Liquid Assets realizable without recourse to a Court of Law and adjusted FSV of mortgaged, pledged, leased or collaterally held assets as valued by valuers fulfilling prescribed eligibility criteria, in accordance with the requirements provided in Regulation 25.
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**(b) For Micro Finance Portfolio**

<b>Classification</b>	<b>Determinant</b>	<b>Treatment of income</b>	<b>Provisions to be made</b>
(1)	(2)	(3)	(4)
OAEM (Other Assets Especially Mentioned)	Where installment, mark-up, interest, profit or principal is overdue by 30 days or more from the due date.	Unrealized mark-up, interest or profit to be put in Suspense Account and not to be credited to Income Account except when realized in cash.	No provision is required
Sub-standard	Where installment, mark-up, interest, profit or principal is overdue by 60 days or more from the due date.	Unrealized mark-up, interest or profit to be put in Suspense Account and not to be credited to Income Account except when realized in cash.	Provision of 25% of the difference resulting from the outstanding balance of principal against the Finance less the amount of Liquid Assets realizable without recourse to a Court of Law and adjusted FSV of mortgaged, pledged, leased or collaterally held assets as valued by valuers fulfilling prescribed eligibility criteria, in accordance with the requirements provided in Regulation 25.

Doubtful	Where installment, mark-up, interest, profit or principal is overdue by 90 days or more from the due date.	Unrealized mark-up, interest or profit to be put in Suspense Account and not to be credited to Income Account except when realized in cash.	Provision of 50% of the difference resulting from the outstanding balance of principal against the Finance less the amount of Liquid Assets realizable without recourse to a Court of Law and adjusted FSV of mortgaged, pledged, leased or collaterally held assets as valued by valuers fulfilling prescribed eligibility criteria, in accordance with the requirements provided in Regulation 25.
Loss	Where installment, mark-up, interest, profit or principal is overdue by 180 days or more from the due date.	Unrealized mark-up, interest or profit to be put in Suspense Account and not to be credited to Income Account except when realized in cash.	Provision of 100% of the difference resulting from the outstanding balance of principal against the Finance less the amount of Liquid Assets realizable without recourse to a Court of Law and adjusted FSV of mortgaged, pledged, leased or collaterally held assets as valued by valuers fulfilling prescribed eligibility criteria, in accordance with the requirements provided in Regulation 25.

**Note: Classified finance facilities, loans or advances that have been guaranteed by the Government would not require provisioning; however markup, interest or profit on such accounts shall be taken to suspense account instead of income account.]<sup>143</sup>**