

FREQUENTLY ASKED QUESTIONS REGARDING HOUSING FINANCE COMPANIES AS PER NBFC REGULATORY FRAMEWORK

Disclaimer: These FAQs are prepared for broad understanding of the issues related to Housing Finance Companies (HFCs) licensed under the NBFC regulatory framework. These FAQs are not intended to be exhaustive or a replacement of the applicable legal / regulatory framework and do not constitute any legal advice for your particular question, issue or concern. The information, however, is intended to be helpful to have basic information on HFCs in Pakistan.

1. What is Housing Finance Service?

Housing finance 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

2. What is Housing Finance Company (HFC)?

HFC means a Non-Banking Finance Company (NBFC) licensed by the Commission to provide housing finance services.

3. What are the types of HFCs?

There are two types of HFCs provided in the NBFCs Regulatory framework:

- a. Deposit Taking HFCs; and
- b. Non-Deposit Taking HFCs.

4. What is the minimum equity requirement for HFCs?

- a. For Deposit taking HFCs – 1,000 million
- b. For non-deposit taking HFCs – 50 million

5. What is the eligibility criteria for the establishment of HFC?

A HFC 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 specified by the Commission and complies with the requirements of the NBFC regulatory framework.

6. What is the process of forming a HFC?

There are three main steps to form a HFC

- i. Permission to form NBFC;
- ii. Incorporation of Company; and
- iii. License to carry on business of Housing Finance.

Formation of NBFCs

- ▶ Application to SECP for NOC to form a NBFC along with the following docs:
 - Form I of the NBFC Rules, 2003 along with all relevant supporting documents as per annexure to form-I of NBFC Rules, 2003.
 - Processing Fee of Rs. 250,000/-
- ▶ Grant of NOC for formation of NBFC by the Commission
- ▶ NOC is valid for six months (extendable for a further maximum period of 3 months).
- ▶ Promoters shall apply for license to undertake NBFC within this period

Incorporation of NBFCs

- ▶ Promoters shall incorporate the company as a private or public company at the relevant Company Registration Office. For Company incorporation please refer to relevant FAQs.

License to Carry-Out the Business as NBFC

- ▶ Promoters, after incorporation of the company shall apply to the Commission for grant of License to undertake the business as an NBFC.
- ▶ The detail of documents required and procedure for grant of license is tabulated below:

S #	Requirement of Law
1	Date of incorporation as a limited company (any form)
2	Authorized, subscribed and paid-up share capital of the company (sponsors' equity indicated separately); Minimum Equity Requirements: <ul style="list-style-type: none"> • Rs. 1,000 million – New deposit taking NBFCs • Rs. 100 million – Non-deposit taking NBFCs having IFS license • Rs. Rs. 50 million – NBFCs having any of NBMFC, leasing, discounting or housing finance services license
3	Minimum number of directors is 2 or as stipulated in Companies Act, 2017
4	1 or one third, whichever is higher, of the directors should be independent
5	One of the directors should have relevant experience of at least 5 year at a senior management level if the total number of directors including CEO is less than or equal to three. If the number of directors including CEO is greater than 3 then 2 of the directors should have relevant experience of at least 5 years at a senior management level. CEO is required to have a minimum of seven to ten years of relevant experience at senior management position.
6	Names and addresses of directors and number of shares held by each of them
7	Directors' interest, direct or indirect, in any other company with details of such interest;
8	Assessment of fitness & propriety of the following as per Fit and Proper Criteria provided in Schedule IX of NBFC Regulations, 2008 of (i) Promoters and sponsors; (ii) Proposed directors including chairman of the board; and (iii) CEO, on the following parameters: <ul style="list-style-type: none"> ◦ Integrity and track record of such person; ◦ Financial soundness of such a person;

	<ul style="list-style-type: none"> ◦ Competence and capability of the person; and ◦ Conflict of interest of such person with the business of the NBFC and Investment
9	Details of persons or group controlling the company including major shareholders with number and value of shares held;
10	Names of holding, subsidiary and associated undertaking, if any;
11	Details of qualified staff engaged
12	Reasons for selecting the proposed place of business with statistical data
13	Additional facts in support of this application
14	Certified copies of the memorandum and articles of association and certificate of incorporation are enclosed
15	An affidavit as to the correctness of the above information by the chief executive and two directors.
16	A receipt of rupees Rs. 500,000 being the processing fee
17	Auditors certificate for calculation of equity
18	Copy of annual accounts

Detailed process for approval to form NBFC and grant of license to undertake business as NBFC is provided at rule 4 and rule 5 of Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003 while the Fit & Proper Criteria is provided in Schedule IX of the Non-Banking Finance and Notified Entities Regulations, 2008.

7. Are there any conditions imposed on HFCs at the time of granting license?

Yes, the Commission can impose any or all conditions provided in the NBFC Rules 2003 at the time of granting license [Please refer to rule 5(6) of NBFC Rules, 2003]. Some of these conditions are summarized below:

- a. the company needs to fulfill the eligibility criteria provided in NBFC Rules, 2003;
- b. the company should not be part of a group of companies already holding a licence, under NBFC Rules, 2003 for the same form of business;
- c. the company must meet minimum equity requirements or any other requirement in lieu of minimum equity requirement as may be prescribed by the Commission
- d. the company must have allotted at least twenty five percent of the paid-up share capital to the promoters;
- e. the company's promoters or majority shareholders and directors have deposited their shares with Central Depository Company of Pakistan Limited in a blocked account and such shares shall not be sold or transferred without prior approval of the Commission and shall be kept unencumbered;
- f. company shall provide evidence of sufficient education and professional qualification of its personnel appointed on executive positions.
- g. 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;

- h. the chief executive should not hold such office in any other company except for an investment company being managed by the said company, with prior approval of the Commission;
- i. the company shall not make any change in the Memorandum of Association, other than increase in the authorized share capital, without prior approval of the Commission;
- j. the company shall comply with the conditions stipulated in NBFC Rules 2003 NBFC&NE regulations 2008 or any direction given by the Commission;

8. Which HFCs are allowed to take deposits from general public?

Only those lending NBFCs including HFCs, which have valid permission from SECP for raising deposits can take deposits. SECP only grants permission for deposit raising subject to compliance with the conditions specified in NBFCs Regulations.

9. What are the conditions to raise deposits by HFCs?

HFCs can apply to the Commission for permission to raise deposits, after complying with the following conditions [Please refer to regulation 14 of the NBFC Regulations, 2008], namely:-

- a. the HFC is undertaking activities for a minimum period of three years and has been, as per the audited accounts, making profits for last two years;
- b. the HFC meets the minimum equity requirement as specified in NBFC Regulations, 2008;
- c. the HFC complies with the Capital Adequacy Ratio as specified in NBFC Regulations, 2008;
- d. the HFC, in which its sponsors had a stake of more than 10%, has not defaulted on, or obtained write off on Finance availed from any financial institution or investor in any of its redeemable capital instruments within the last five years;
- e. the NBFC, or any other NBFC in which its sponsors had a stake of more than 10%, has not defaulted on any obligation towards any of its depositors, which term shall include investors in any of its deposit raising arrangements;
- f. the NBFC is listed on a stock exchange;
- g. the operations of the NBFC and the conduct of its directors with respect to the NBFC has been in accordance with law; and
- h. the NBFC has been assigned a credit rating of minimum A- from a credit rating agency registered with the Commission

10. What are the conditions applicable on HFCs after obtaining license from SECP?

After obtaining license from SECP, HFCs are required to fulfill various conditions, as provided in NBFC Rules , 2003 [Please refer to Rule 7 of NBFC Rules, 2003]. Some of the key conditions are summarized as follows:

- (a) maintain books of accounts and other records of all the transactions reflecting assets, liabilities, income and expenses along with supporting documents;
- (b) record of transactions with banks;
- (c) record of the Board meetings and all the relevant committees working under the board of directors;
- (d) original record of all reports, analysis and memoranda containing investment advice distributed;
- (e) HFC must ensure that its statutory auditors are from the approved list of auditors circulated by the Commission;
- (f) furnish to the Commission its quarterly and annual financial statements

- (g) follow directions issued to protect NBFCs against their involvement in money laundering activities, terrorist financing and other unlawful trades;
- (h) obtain 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;
- (i) acquire and maintain membership of the relevant association and follow the code of conduct specified by the said association approved by the Commission.”;
- (j) HFC shall primarily invest at least seventy per cent of their total assets in housing finance on quarterly average basis:

11. Are there any restrictions in the NBFC regulatory framework on HFCs?

After obtaining license from SECP, HFCs are barred from taking certain actions as provided in NBFC Rules 2003 [refer Rule 7(2) of NBFC Rules, 2003]. Some of the key don'ts are summarized as follows:

A HFC shall not,

- (a) appoint as directors those 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;
- (b) appoint or change its chief executive or any of its directors without prior approval of the Commission;
- (c) 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;
- (d) form, sell or transfer ownership of shares in subsidiary or associated company, merge with, acquire or takeover any other company without prior approval of the Commission in writing;
- (e) sell strategic investment without prior approval of the Commission in writing to such sale;
- (f) merge with, acquire or takeover any other company without prior approval of the Commission;
- (g) 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;
- (h) make aggregate investment in shares of unlisted company in excess of twenty percent of its equity.
- (i) hold, deal or trade in real estate except for the use of HFC itself or where specified by the Commission;
- (j) raise deposits in any form by whatever name called except as specified by the Commission in the NBFC&NE Regulations 2008;
- (k) undertake the brokerage business in capital market except by forming a separate company for this purpose.

12. What is the criteria for becoming a director on the board of HFC?

All the proposed directors are required to fulfill the criteria for fitness and propriety as provided in Schedule IX of NBFCs Regulations 2008.

13. What is the procedure for appointment of Directors on the board of a HFC?

A HFC shall follow the following procedure for obtaining approval of appointment or re-appointment or any change of its directors or chief executive, -

- a. In case of election of directors in the Annual or Extraordinary General Meeting, the HFC, 10 days before the date of the meeting in which election of directors is to be held, shall

submit an application for the individuals seeking to contest the elections whether they are retiring directors or otherwise;

- b. within ten days from the date of election of directors in a general meeting, the NBFC shall submit an application for appointment or reappointment of chief executive
- c. in case of occurrence of any casual vacancy in respect of a director or a chief executive, the HFC shall submit an application within ten days
- d. in case the Board of Directors of an NBFC decides to remove its chief executive before the expiration of his term of office or the chief executive decides to tender his resignation before the completion of his term of office or replacement of Chief Executive on completion of his term, the NBFC shall inform the Commission immediately inform the Commission along with reasons for the same:

14. What information is required to be submitted for appointment of Directors/CEO?

HFC must submit all the information provided in Annexure 'A' and 'B' of NBFCs Regulations 2008.

15. What is the fee for permission to form NBFC

The fees applicable to NBFCs are specified by the Commission in Schedule – II of the NBFC Regulations. Currently the fee specified for permission to form NBFC is Rs. 250,000/-. Please note that the applicable fee may be subject to change from time to time, as may be decided by the Commission [Refer to SRO 270(I)/2020 dated March 31, 2020]

16. What is the fee for obtaining license to undertake Housing Finance services?

The fees applicable to NBFCs are specified by the Commission in Schedule – II of the NBFC Regulations. Currently the fee for obtaining license to undertake Housing Finance services is Rs. 500,000/-. Please note that the applicable fee may be subject to change from time to time, as may be decided by the Commission.

17. What is the fee for renewal of license for HFCs?

The fees applicable to NBFCs are specified by the Commission in Schedule – II of the NBFC Regulations. Currently there is no fee for renewal of license to carry out Housing Finance services permission to form NBFC is Rs. 250,000/-. Please note that the applicable fee may be subject to change from time to time, as may be decided by the Commission.

18. Which Form is used to file application for permission to form NBFC?

Form I of NBFC Rules, 2003 along with supporting information as stipulated in its Annexure A.

19. Which Form is used to file application for obtaining license to carryout Housing Finance Services?

Form II of NBFC Rules, 2003 along with supporting information provided therein.

20. Which Form is used to file application for renewal of license as HFC?

Form IV of NBFC Rules, 2003 along with supporting information provided therein.

21. Where can one find NBFC Rules, 2003?

You can find NBFC Rules, 2003 through the following link

<https://www.secp.gov.pk/laws/rules/>

22. Where can one find NBFC&NE Regulations, 2008?

You can find NBFC&NE Regulations, 200 through the following link

<https://www.secp.gov.pk/laws/regulations/>

23. What is the term of license granted to HFCs

The licence granted to HFCs shall be valid for three years from the date of its issuance and shall be renewable upon expiry of the said period. For renewal of license the HFCs are required to make an application at least one month prior to the expiry along with payment of a fee as specified by the Commission.

24. How can we approach for further information about HFCs?

For any further information you may please contact the Commission over phone at +92-51-9207091-4 or can submit your queries through <https://sdms.secp.gov.pk/>