



# THE EQUITY PARTICIPATION FUND ORDINANCE, 1970



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# EQUITY PARTICIPATION FUND ORDINANCE, 1970

## <sup>1</sup>ORDINANCE NO. I OF 1970

[6th January, 1970]

### **An Ordinance to provide for the establishment of an Equity Participation Fund.**

WHEREAS it is expedient to establish an Equity Participation Fund to promote and generate investment in the private sector <sup>2</sup>[in the less developed areas of Pakistan and certain other areas by providing equity support to the entrepreneurs of moderate means who are unable to raise funds for industrial activity from the capital market;

AND WHEREAS the national interest of Pakistan in relation to economic and financial stability of Pakistan requires Central legislation in the matter;

NOW, THEREFORE, in pursuance of the Proclamation of the 25<sup>th</sup> day of March, 1969, read with the Provisional Constitution Order, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:—

**1. Short title, extent and commencement.** —(1) This Ordinance may be called the Equity Participation Fund Ordinance, 1970.

(2) It extends to the whole of Pakistan <sup>3</sup>[and also applies to the business of the Fund transacted outside Pakistan and the persons conducting such business].

(3) It shall come into force at once.

**2. Definitions.** In this Ordinance, unless there is anything repugnant in the subject or context,—

(a) “Bank” means the Industrial Development Bank of Pakistan established under the Industrial Development Bank of Pakistan Ordinance, 1961 (XXXI of 1961).

(b) “Board” means the Board of Directors of the Fund;

(c) “company” means a company as defined in the Companies Act, 1913 (VII of 1913), and includes a corporation established by or under any other law for the time being in force;

(d) “Director” means a member of the Board;

(e) “Equity Security” means—

(i) any stock or transferable share, preferred or common, or similar security representing ownership,

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<sup>1</sup>The Ordinance has been declared to be validly made by the competent authority see the Validation of Laws Act, 1975 (63 of 1975).

<sup>2</sup>Subs. by the Equity Participation Fund (Amdt.) Ordinance, 1978 (5 of 1978), s. 2. for “the less developed areas of Pakistan” which was previously subs. by Act 7 of 1973, s. 3, for certain words.

<sup>3</sup>Added *ibid.*, s. 3.

- (ii) any security carrying any warrant or right to purchase or subscribe for such a security and any such warrant or right itself, and
- (iii) such other security representing ownership as may be prescribed;
- (f) “Fund” means the Equity Participation Fund established under this Ordinance;
- (g) “institutional investor” means any company;
- <sup>1</sup>[(gg) “less developed areas” means such areas as may be prescribed;]
- (h) “medium-sized enterprise” means any such enterprise as is prescribed to be a medium-sized enterprise;
- (i) “prescribed” means prescribed by rules;
- (j) “regulation” means a regulation made under this Ordinance;
- (k) “rule” means a rule made under this Ordinance;
- (l) “scheduled bank” has the same meaning as in the State Bank of Pakistan Act, 1956 (XXXIII of 1956);
- (m) “small-sized enterprise” means any such enterprise as is prescribed to be a small-sized enterprise;
- (n) “underwriting” means entering into contract, with or without conditions, to purchase or subscribe for stocks or shares or other securities issued by any company or institution with a view to holding, selling or distributing the whole or part thereof.

**3. Establishment of the Fund.** —(1) As soon as may be after the coming into force of this Ordinance, the <sup>2</sup>[Federal Government] shall establish a financial institution to be called the Equity Participation Fund to carry out the purposes of this Ordinance.

(2) The Fund shall be a body corporate by the name of Equity Participation Fund having perpetual succession and a common seal, and shall, by the said name, sue and be sued.

(3) The Head Office of the Fund shall be located at <sup>3</sup>[Karachi].

**4. Share capital.**—(1) The authorised share capital of the Fund shall, in the first instance, be <sup>4</sup>[two hundred million] of rupees divided into <sup>5</sup>[two million] ordinary shares of one hundred rupees each.

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<sup>1</sup> Ins. by the Equity Participation Fund (Amdt.) Act, 1973 (7 of 1973), s. 4.

<sup>2</sup> Subs. *ibid.*, s. 2, for “Central Government”.

<sup>3</sup> Subs. *ibid.*, s. 5, for “Dacca”.

<sup>4</sup> Subs. by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s. 3 and Sch., II, for “twenty crores”.

<sup>5</sup> Subs. *ibid.*, for “twenty lakh”.

(2) The paid-up share capital of the Fund shall, in the first instance, be five crores of rupees fully paid up to be contributed as follows:—

Government of Pakistan	..	..	.. Rs. 2 crores.
Government of East Pakistan	..	..	.. Rs. 50 lacs.
Government of West Pakistan	..	..	.. Rs. 50 lacs.
State Bank of Pakistan	..	..	.. Rs. 1 crore.
Institutional Investors	..	..	.. Rs. 1 crore.
		Total	.. Rs. 5 Crores.

(3) The authorised capital and the paid up capital of the Fund may, by notification in the official Gazette, be increased by the <sup>1</sup>[Federal Government] in such manner as may be specified therein.

<sup>2</sup>[(4) The shares and debentures of the Fund shall be deemed to be included among the securities enumerated in section 20 of the Trusts Act, 1882 (II of 1882), and to be approved securities for the purpose of the Insurance Act, 1938 (IV of 1938), and the Banking Companies Ordinance, 1962 (LVII of 1962).]

**5. Direction and superintendence.** The overall direction and superintendence of the affairs of the Fund shall vest in the Board; and the Board shall, in giving any direction, act on business considerations having regard to the objectives of the Fund.

**6. Management and administration.** —(1) Subject to the general directions of the Board, the affairs and business of the Fund shall be managed and administered by the Bank in accordance with the terms of the agreement entered into under sub-section (2).

(2) The Fund and the Bank shall, with the prior approval of the <sup>1</sup>[Federal Government], enter into an agreement specifying the terms in accordance with which the Bank shall manage and administer the affairs and business of the Fund:

Provided that if the Fund and the Bank do not agree on the terms, the terms of the agreement shall be as settled by the <sup>1</sup>[Federal Government].

**7. Board.**—<sup>3</sup>[(1) The Board shall consist of the following members, namely:—

(a) two Directors to be nominated by the Federal Government one of whom shall be a non-official and the other an official;

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<sup>1</sup>Subs. by the Equity Participation Fund (Amdt.) Act, 1973 (7 of 1973), s. 2 for "Central Government".

<sup>2</sup>Added by the Equity Participation Fund (Amdt.) Ordinance 1971 (16 of 1971), s. 2.

<sup>3</sup>Subs. by Act 7 of 1973, 6, for sub-section (1).

- (b) one Director to be nominated by each of the Provincial Governments;
- (c) one Director to be nominated by the Bank who shall be the Executive Director;
- (d) one Director to be nominated by the State Bank of Pakistan; and
- (e) two Directors to be elected by the institutional investors, being share-holders of the Fund, in such manner as may be prescribed.]

(2) The Director nominated by the <sup>1</sup>[Federal Government] who is a non-official shall be the Chairman of the Board.

(3) Unless the <sup>1</sup>[Federal Government] by notification in the official Gazette otherwise directs, a Director, other than an *ex-officio* Director, shall hold office for a period of three years from the date on which he assumes office.

(4) No act or proceedings of the Board shall be invalid merely on the ground of existence of any vacancy in, or any defects in the constitution of, the Board.

**8. Qualification of Directors.** No person shall be qualified to be elected or nominated as, and to be, a Director of the Fund if he—

- (a) is a member of the <sup>2</sup>[Federal] or a Provincial Legislature;
- (b) is an undischarged insolvent;
- (c) stands declared by a competent court to be of unsound mind;
- (d) has, at any time, been convicted of an offence which the <sup>1</sup>[Federal Government] declares to be an offence involving moral turpitude;
- (e) without leave of the Board, absents himself from three consecutive meetings of the Board;
- (f) has any such financial or other interest in any company financed by the Fund as is likely to affect prejudicially his functions as a Director;
- (g) is or becomes a salaried employee of any company financed by the Fund.

**9. Executive Committee.**<sup>3</sup>[(1) The Board shall constitute an Executive Committee consisting of not more than six Directors to assist it in the discharge of its functions.]

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<sup>1</sup>Subs. by the Equity Participation Fund (Amdt.) Act, 1973 (7 of 1973) s. 2, for "Central Government".

<sup>2</sup>Subs. by the F.A.O. 1975, Art. 2 and Table, for "Central".

<sup>3</sup>Subs. by Act 7 of 1973 s. 7, for sub-section (1)

(2) When the Board is not in session, the Executive Committee shall perform the functions of the Board.

**10. Meetings of the Board and the Executive Committee.** The meetings of the Board and the Executive Committee shall be conducted in such manner as may be prescribed.

**11. Fees for attending meetings.** The Directors shall be paid such fees for attending the meetings of the Board and the Executive Committee as may be prescribed.

**12. Secrecy and fidelity.** No Director shall assume his office until he has made such declaration affirming secrecy fidelity as may be prescribed.

**13. Indemnity of Directors.** A Director shall not be personally liable for acts of any other Director or of any officer or servant employed by the Fund or the Bank or for any loss or expenditure resulting to the Fund by reasons of the insufficiency or deficiency in value of or title to any property or security acquired or taken on behalf of the Fund or by reason of anything done by him in good faith in the discharge of his duties.

**14. Business which the Fund can transact.** —(1) The Fund may carry on, transact or do several kinds of business and acts hereinafter specified namely:—

- (a) extending of equity support for supplementing the capital resources of small-sized enterprises and medium sized enterprises in the private sector in <sup>1</sup>[or in areas outside Pakistan] through outright purchase of equity;
- (b) underwriting, managing, and distributing the issue of stocks and shares of such enterprises either singly or in conjunction with other financial institutions;
- (c) facilitating investment by selling new share floatations of companies without underwriting obligations;
- (d) purchasing or otherwise acquiring, owning, selling, transferring and exchanging any tangible and intangible movable or immovable property or any rights, title or interest in such property acquired for the conduct of its business;
- (e) accepting and furnishing any lien, charge, hypothecation or mortgage of any tangible or intangible movable or immovable property or assets in the conduct of its business;
- (f) selling of shares acquired or held by it through stock exchanges in Pakistan or by private negotiations required for revolving its funds or for any other purpose;

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<sup>1</sup>Subs. by the Equity Participation Fund (Amdt.) Ordinance, 1978 (5 of 1978), s. 4, for "the less developed areas of Pakistan", which was previously subs. by Act 7 of 1973, s. 8, for certain words.

- (g) entering into agreements and contracts and executing such documents as may be considered necessary for the discharge of its functions;
- (h) receiving and paying commissions, fees and brokerage in connection with its business;
- (i) investing its surplus funds in securities in the manner specified for this purpose by the Board from time to time;
- (j) acquiring or retaining as part of its assets any stocks or shares which it may have to take up in the discharge of any liability incurred through underwriting commitments;
- (k) appointing attorneys and agents;
- (l) acquiring, retaining and disposing of assets of any type in satisfaction of its claims;
- (m) doing of all such acts and things as may be incidental or subsidiary to transacting any of the aforesaid businesses;
- (n) doing of such other acts and things in furtherance of purposes of this Ordinance as the <sup>1</sup>[Federal Government] may from time to time direct.

(2) The Fund shall perform its functions in accordance with the rules and regulations.

**15. Borrowing powers.** The Fund may, with the prior approval of the <sup>1</sup>[Federal Government], borrow funds from any source with or without security.

**16. Accounts.** The Fund shall maintain its accounts in such manner as may be prescribed.

**17. Auditors.** —(1) The accounts of the Fund shall be audited and certified each year by not less than two chartered accountants as defined in the Chartered Accountants Ordinance, 1961 (X of 1961).

(2) The Fund shall furnish every year each shareholder with a copy of its audited accounts including the profit and loss accounts and a report on the working of the Fund.

(3) The audited accounts including the profit and loss account shall be published in the official Gazette by the Fund.

**18. Annual general meeting.** —(1) The annual general meeting of the shareholders of the Fund shall be held on such date and at such time and place as may be fixed by the Board but in any case not later than six months from the date of closing of accounts.

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<sup>1</sup>Subs. by the Equity Participation Fund (Amdt.) Act, 1973 (7 of 1973), s. 2 for "Central Government".

(2) The Bank shall submit at the annual general meeting for the consideration of shareholders a statement of accounts and a report on the operation of the Fund for the preceding financial year.

(3) Copies of annual statement of accounts and report shall be submitted to the <sup>1</sup>[Federal Government] immediately after the holding of the annual general meeting.

**19. Winding up of the Fund.** The Fund shall not be wound up save by order of the <sup>1</sup>[Federal Government] and in such manner as it may direct.

**20. Exemption from taxes and duties.**—(1) Notwithstanding anything contained in the Income tax Act, 1922 (XI of 1922), or any other law for the time being in force in Pakistan relating to income-tax, super-tax or business profits tax, the Fund shall not be liable to pay any such tax on its income, profits or gains.

(2) All transactions entered into by the Fund in respect of purchases and sales of equity security shall not be liable to the payment of any stamp duty under the Stamp Act, 1899 (II of 1899).

**21. Power to make rules.** The Board may, with the previous approval of the <sup>1</sup>[Federal Government], make rules for carrying out the purposes of this Ordinance, and any rules so made shall be published in the official Gazette.

**22. Power to make regulations.**—(1) The Board may make regulations to provide for all matter not required to be provided for by rules and provision for which is necessary or expedient for carrying out the purposes of this Ordinance.

(2) Where any provision of any regulation is inconsistent with any provision of the rules, the provision of the rules shall prevail.

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<sup>1</sup>Subs. by the Equity Participation Fund (Amdt.) Act, 1973 (7 of 1973), s. 2 for "Central Government".

