

INSERTIONS

COMPETITION (MERGER CONTROL) REGULATIONS 2016		
S. No.	Section No.	
1.	2(1)(a)	"acquisition" means any change of control of an undertaking by way of acquisition of shares, assets or any other means;
2.	2(1)(b)	"Act" means the Competition Act, 2010;
3.	2(1)(c)	"amalgamation" means the combination of two or more undertakings into a new entity aiming that neither of the combining undertakings shall survive as a legal entity and a completely new entity shall be formed to house the combined assets and liabilities of all such undertakings;
4.	2(1)(e)	"asset management company" means a company that invests the pooled funds of retail investors in securities in line with the stated investment objects against a fee;
5.	2(1)(l)	"Investment Company" means a company engaged principally or wholly in buying and selling securities of other companies and includes a company, not being a holding company, the investment of which in the share capital of other companies at any one time is of an amount equivalent to eighty percent of the aggregate of its own paid up capital and free reserves, but does not include a bank or an insurance company or a corporation which is a member of a Stock Exchange"
6.	2(1)(m)	"merger" as defined in section 2 of the Act, for the purpose of any reference in these Regulations, means the merger, acquisition, amalgamation, combination or joining of two or more undertakings or part thereof into an existing undertaking or to form a new undertaking and the expression "merge" means to merge, acquire, amalgamate, combine or join, as the context may require;
7.	2(1)(q)	"Regulations" means the Competition (Merger Control) Regulations, 2016
8.	7(1)(d)	Persons making the application (1) An application shall be made (jointly or otherwise) by the following , and no others: (d) where the applicant is an unincorporated association (other than a partnership), by an officer of that association or a member of its governing body.
9.	11(3)	The Commission shall determine whether the merger meets the pre-merger notification thresholds as prescribed in these Regulations and the presumption of dominance as determined under section 2(1)(e) read with section 3, in terms of section 11(5).
10.	20(4)	The Commission may treat all the information provided by the applicant through any 14 application, document or correspondence as non-confidential, if the applicant does not specify any part thereof as confidential.
11.	30	Mode of Service of Notice (1) Any notice required to be issued to any undertaking under these Regulations may be:- (a) delivered personally at its last known address; or (b) left at its last known address or sent to it by ordinary post; or (c) sent through courier service at its last known address; or (d) sent through electronic mail.

12.	31	<p>Time</p> <p>(1) Where an act is required to be done in accordance with these Regulations within a specified period after or from a specified date, the period begins immediately after that date.</p> <p>(2) Where an act is required to be done in accordance with these Regulations within or not less than a specified period before a specified date, the period ends immediately before that date.</p> <p>(3) Where the time prescribed by these Regulations for doing any act expires on a day which is not a working day, the act is in time if done at or before 5 p.m. on the next following working day.</p> <p>(4) Where an act done in accordance with these Regulations is done on a day which is not a working day, or after 5 p.m. on a working day, the act shall be treated as done on the next following working day.</p>
13.	32	<p>Removal of difficulty. In the matter of implementation of these Regulations, if any doubt or difficulty arises, the same shall be placed before the Commission and the decision of the Commission thereon shall be final and binding.</p>
14.	33	<p>Overriding effect. These Regulations shall have effect in all matters relating to mergers notwithstanding anything inconsistent therewith contained in any other regulations framed under the Act.</p>
15.	34	<p>Repeal. On the commencement of these Regulations, the Competition (Merger Control) Regulations, 2007 shall stand repealed.</p>

MODIFICATIONS					
COMPETITION (MERGER CONTROL) REGULATIONS 2007			COMPETITION (MERGER CONTROL) REGULATIONS 2016		
S. No.	Section No.	Provision	Section No.	Provision	
1.	Preamble	S.R.O. 1188(I)/2007- In exercise of the powers conferred by section 56 of the Competition Ordinance, 2007 (the Ordinance) read with sections 11 and 31 thereof , the Competition Commission of Pakistan (the Commission), is pleased to make the following regulations, namely:- Competition (Merger Control) Regulations, 2007	Preamble	S.R.O. 1176 (I)/2016- In exercise of the powers conferred by <u>section 58 of the Competition Act, 2010 (the Act) read with sections 11 and 31 thereof</u> , the Competition Commission of Pakistan (the Commission), is pleased to make the following regulations, namely:- <u>Competition (Merger Control) Regulations, 2016</u>	
2.	2(1)(c)	“confidential information” means commercial or technical information the disclosure of which would, or might, in the opinion of the Commission, significantly harm the legitimate business interests of the undertaking to which it relates.	2(1)(h)	“confidential information” means- (i) the commercial information <u>of an undertaking(s)</u> , the disclosure of which would or might, in the opinion of the Commission, significantly harm the legitimate business interests of the undertaking to which it relates; <u>or</u>	

				<p>(ii) <u>the information relating to the private affairs of an individual, the disclosure of which would or might, in the opinion of the Commission, significantly harm the individual's interests; or</u></p> <p>(iii) <u>the information the disclosure of which would, in the opinion of the Commission, be contrary to the public interest;</u></p>
3.	2(1)(h)	"merger parties" means parties to an intended merger or parties involved in a merger.	2(1)(n)	<u>"merger parties" means and includes any one or more undertakings which agree in principle or sign a non-binding letter of intent to proceed with any intended merger or may be directly or indirectly involved in consummation of a merger;</u>
4.	3(f)	Without prejudice to the generality of the term merger as defined under clause (h) of subsection 1 of section 2, merger shall be deemed to have occurred if (f) a collaborative arrangement by which two or more undertaking devote their resources to pursue a common objective; provided that such arrangement must be: (i) subject to joint control; (ii) perform the functions of an autonomous entity ; and (iii) on a lasting basis.	3(e)	Without prejudice to the generality of the term merger as defined under clause (h) of subsection 1 of section 2, merger shall be deemed to have occurred if (e) a collaborative arrangement by which two or more undertakings devote their resources to pursue a common objective; provided that such arrangement must be: (a) subject to joint control; (b) to perform the functions <u>independently</u> ; and (c) on a lasting basis.
5.	3	Explanation: Control, in relation to an undertaking, shall be regarded as existing if, by reason of securities, contracts or any other means, or any combination of securities, contracts or other means, influence is capable of being exercised with regard to the activities of the undertaking and, in particular, by – (a) ownership of, or the right to use all or part of, the assets of an undertaking; or (b) rights or contracts which enable decisive influence to be exercised with regard to the composition, voting or decisions of the organs of an undertaking.	3	Explanation I: Control, in relation to an undertaking, shall be regarded as existing if, by reason of securities (<u>being not less than 10% of their market value</u>), contracts or any other means, or any combination of securities, contracts or other means, influence is capable of being exercised with regard to the activities of the undertaking and, in particular, by - (a) ownership of, or the right to use all or part of, the assets of an undertaking; or (b) rights or contracts which enable decisive influence to be exercised with regard to the composition, voting or decisions of the organs of an undertaking. Explanation II: <u>For the purpose of determining 'control' through 'securities', such securities mean shares in the share capital of an undertaking carrying voting rights and includes any other</u>

				<u>security which entitles the holder thereof to obtain or exercise voting rights. Such securities also include all depository receipts carrying entitlement to the holder to exercise voting rights in the related undertaking.</u>
6.	4(2)	<p>The merger parties may not be required to make application for clearance from the Commission under sub-section (2) of section 11, unless:</p> <p>(a) the value of gross assets of the undertaking, excluding value of goodwill, is not less than three hundred million rupees and/or the combined value of the undertaking and the undertaking(s) the shares of which are proposed to be acquired or the undertakings being merged, is not less than one billion rupees; or</p> <p>(b) annual turnover of the undertaking in the preceding year is not less than five hundred million rupees and/or the combined turnover of the undertaking and the undertaking(s) the shares of which are proposed to be acquired or the undertakings being merged is not less than one billion rupees; and</p> <p>(c) the transaction relates to acquisition of shares or assets of the value of <i>one hundred million rupees</i> or more; or</p> <p>(d) in case of acquisition of shares by an undertaking, if an acquirer acquires voting shares, which taken together with voting shares, if any, held by the acquirer shall entitle the acquirer to more than 10% voting shares;</p> <p>(e) in the case of an asset management company carrying out asset management services, its collective</p>	<p>4(2)</p> <p>(2) The merger parties, <u>excluding asset management companies</u>, may not be required to make application for clearance from the Commission under sub-section (2) of section 11, unless:</p> <p>(a) the value of gross assets of the undertaking, excluding value of goodwill, is not less than three hundred million rupees or the combined value of the undertaking and the undertaking(s) the shares of which are proposed to be acquired or the undertakings being merged, is not less than one billion rupees; or</p> <p>(b) annual turnover of the undertaking in the preceding year is not less than five hundred million rupees or the combined turnover of the undertaking and the undertaking(s) the shares of which are proposed to be acquired or the undertakings being merged is not less than one billion rupees; and</p> <p>(c) the transaction relates to acquisition of shares or assets of the value of one hundred million rupees or more; or</p> <p>(d) in case of acquisition of shares by an undertaking, if an acquirer acquires voting shares, which taken together with voting shares, if any, held by the acquirer shall entitle the acquirer to more than 10% voting shares.</p> <p>4(3)</p> <p>The merger parties being asset management companies carrying out asset management services, may not be required to make application for clearance from the Commission under <u>sub-section (1) of section 11</u>, unless –</p> <p>(a) the collective exposure for itself and in all of its collective investment schemes in a single entity is more than 25% of total voting rights; or</p>	

		<p>exposure for itself and in all of its collective investment schemes in a single entity is more than 25% of total voting rights; or</p> <p>(f) the value of total assets under management of an Asset Management Company is one billion rupees or more;</p>		<p>(b) the value of total assets under management of an asset management company is one billion rupees or more; and</p> <p><u>(c) the transaction relates to acquisition of shares or assets of the value of one hundred million rupees or more; or</u></p> <p><u>(d) in case of acquisition of shares by an undertaking, if an acquirer acquires voting shares, which taken together with voting shares, if any, held by the acquirer shall entitle 5 the acquirer to more than 10% voting shares</u></p>																																								
7.	5(6)	<p>No person shall make an application under sub-regulation (1) hereof unless it is accompanied by a processing fee amounting to Rs. 200,000/- (two hundred thousand rupees) or at rates indicated below, which- ever amount is greater. The fee may be paid in the form of bank challan or bank draft in favour of the Commission.</p> <table border="1"> <thead> <tr> <th><u>Turnover of merger Parties (undertakings)</u></th> <th>Fee</th> </tr> </thead> <tbody> <tr> <td>(i) Up to 500 million rupees</td> <td>Rs. 200,000/-</td> </tr> <tr> <td>(ii) More than 500 million but not exceeding 750 million rupees</td> <td>Rs. 400,000/-</td> </tr> <tr> <td>(iii) More than 750 million but not exceeding 1000 million rupees</td> <td>Rs. 500,000/-</td> </tr> <tr> <td>(iv) More than 1000 million rupees but not exceeding 5000 million</td> <td>Rs. 700,000/-</td> </tr> <tr> <td>(v) More than 5000 million rupees but not exceeding 10,000 million</td> <td>Rs. 1,000,000/-</td> </tr> <tr> <td>(vi) Exceeding 10,000 million rupees</td> <td>Rs. 1,500,000/-</td> </tr> <tr> <th><u>Assets under management of the applicant Asset Management Company(ies)</u></th> <th>Fee</th> </tr> <tr> <td>(i) Up to 5 billion rupees</td> <td>Rs. 200,000/-</td> </tr> <tr> <td>(ii) More than 5 billion but not exceeding 7.5 billion rupees</td> <td>Rs. 400,000/-</td> </tr> </tbody> </table>	<u>Turnover of merger Parties (undertakings)</u>	Fee	(i) Up to 500 million rupees	Rs. 200,000/-	(ii) More than 500 million but not exceeding 750 million rupees	Rs. 400,000/-	(iii) More than 750 million but not exceeding 1000 million rupees	Rs. 500,000/-	(iv) More than 1000 million rupees but not exceeding 5000 million	Rs. 700,000/-	(v) More than 5000 million rupees but not exceeding 10,000 million	Rs. 1,000,000/-	(vi) Exceeding 10,000 million rupees	Rs. 1,500,000/-	<u>Assets under management of the applicant Asset Management Company(ies)</u>	Fee	(i) Up to 5 billion rupees	Rs. 200,000/-	(ii) More than 5 billion but not exceeding 7.5 billion rupees	Rs. 400,000/-	6(6)	<p>No application under sub-regulation (1) shall be deemed to have been made unless it is accompanied by a processing fee at the rates prescribed in the table below and the processing fee is paid through bank challan or in the form of a bank draft drawn in favour of the Commission or <u>through wire transfer directly to the Commission's bank account (along with relevant details).</u></p> <table border="1"> <thead> <tr> <th><u>Turnover of merger Parties (undertakings)</u></th> <th>Fee</th> </tr> </thead> <tbody> <tr> <td>(i) Up to 500 million rupees</td> <td>Rs. 300,000/-</td> </tr> <tr> <td>(ii) More than 500 million but not exceeding 750 million rupees</td> <td>Rs. 600,000/-</td> </tr> <tr> <td>(iii) More than 750 million but not exceeding 1000 million rupees</td> <td>Rs. 750,000/-</td> </tr> <tr> <td>(iv) More than 1000 million rupees but not exceeding 5000 million</td> <td>Rs. 1,050,000/-</td> </tr> <tr> <td>(v) More than 5000 million rupees but not exceeding 10,000 million</td> <td>Rs. 1,500,000/-</td> </tr> <tr> <td>(vi) Exceeding 10,000 million rupees</td> <td>Rs. 2,250,000/-</td> </tr> <tr> <th><u>Assets under management of the applicant Asset Management Company(ies)</u></th> <th>Fee</th> </tr> <tr> <td>(i) Up to 5 billion rupees</td> <td>Rs. 300,000/-</td> </tr> <tr> <td>(ii) More than 5 billion but not exceeding 7.5 billion rupees</td> <td>Rs. 600,000/-</td> </tr> </tbody> </table>	<u>Turnover of merger Parties (undertakings)</u>	Fee	(i) Up to 500 million rupees	Rs. 300,000/-	(ii) More than 500 million but not exceeding 750 million rupees	Rs. 600,000/-	(iii) More than 750 million but not exceeding 1000 million rupees	Rs. 750,000/-	(iv) More than 1000 million rupees but not exceeding 5000 million	Rs. 1,050,000/-	(v) More than 5000 million rupees but not exceeding 10,000 million	Rs. 1,500,000/-	(vi) Exceeding 10,000 million rupees	Rs. 2,250,000/-	<u>Assets under management of the applicant Asset Management Company(ies)</u>	Fee	(i) Up to 5 billion rupees	Rs. 300,000/-	(ii) More than 5 billion but not exceeding 7.5 billion rupees	Rs. 600,000/-
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8.	5(7)	The Commission may, for reasons to be recorded, remit or reduce it to the minimum amount of application fee prescribed in sub-regulation (6) of regulation 5 in favour of a reputable non-profit organization dedicated for public welfare, on its written request, if the Commission is satisfied that the applicant undertaking has credible track record of performance during the preceding period of five years.	6(7)	The Commission may, for reasons to be recorded, remit or reduce the application fee as prescribed in the table provided in sub-regulation (6) of regulation 6 in favor of a reputable non-profit organization dedicated for public welfare, on its written request, subject to the condition that the Commission is satisfied that such undertaking has credible track record of performance during the preceding period of five years.																
9.	8(1)	(1) Where a party to an intended merger wishes to make or makes an application under section 11, it shall give notice to all other parties to the intended merger, with a copy endorsed to the Commission.	8(1)	Where a party to an intended merger wishes to make or makes an application under section 11, it shall give notice to all other parties to the intended merger, with a copy endorsed to the																

				Commission, <u>stating that the application will be or has been made.</u>
10.	10(4)	Subject to sub-regulation (5) of regulation 9, the Commission shall complete a Phase 1 review within 30 working days. By the end of this period, the Commission will determine whether to issue a favourable decision and allow the merger situation to proceed, or to carry on to a Phase 2 review. The Commission's decision will be communicated to the applicant in writing .	11(5)	Subject to sub-regulation (5) of regulation 9, the Commission shall complete a first phase review within 30 working days. By the end of this period, the Commission will determine whether to issue a favourable decision and allow the merger situation to proceed or to carry on to a second phase review. The Commission's decision will be communicated to the applicant <u>through the issuance of an Order.</u>
11.	15	Heading: "Exemptions"	15	Heading: "Efficiency Criteria"
12.	16(1)	Where the Commission makes a favourable decision, it may impose conditions on the concerned undertaking for carrying out the merger and shall give notice of the decision to the concerned undertakings. The Commission may also place the favourable decision on its website.	17(1)	Where the Commission <u>allows a merger</u> makes a favourable decision, it may impose conditions on the concerned undertaking for carrying out the merger and shall give notice of the decision to the concerned undertakings. The Commission may also place the favourable decision on its website.
13.	22	The Commission may undertake, carry out or conduct an investigation if there are reasonable grounds for suspecting that a merger or that an intended merger if carried into effect will substantially lessen competition in the relevant market.	23	The Commission may undertake, carry out or conduct an investigation if there are reasonable grounds for suspecting that a merger or that an intended merger if carried into effect will substantially lessen competition <u>by creating or strengthening a dominant position</u> in the relevant market.
14.	25	Parties suffering loss or damage directly arising from a merger that substantially lessens competition in the relevant market are entitled to commence a civil action seeking relief against the relevant undertakings. Such rights shall only arise after the Commission has made a decision that a merger has infringed the relevant provisions of the Ordinance and the appeal period has expired or, where an appeal has been brought, upon determination of the appeal.	26	Parties <u>as defined in regulation 2 (1) (p)</u> , suffering loss or damage directly arising from a merger that substantially lessens competition in the relevant market are entitled to commence a civil action seeking relief against the relevant undertakings. Such rights shall only arise after the Commission has made a decision that a merger has infringed the relevant provisions of the <u>Act</u> and the appeal period has expired or, where an appeal has been brought, upon determination of the appeal. Note: 2(1)(p) defines "private litigants" as "person or persons who are not party (ies) to a merger and suffer loss or damage as

				a result of merger or apprehends such loss or damage after intended merger". The definition of this term is identical in both the 2007 and the 2016 Regulations.
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DELETIONS		
S. No.	Section No.	COMPETITION (MERGER CONTROL) REGULATIONS 2007
1.	2(1)(j)	"Ordinance" means the Competition Ordinance, 2007
2.	Schedule (Form of Pre-Merger Application)	Note that the 2016 Regulations make reference to the form of the pre-merger application appearing the Schedule, and such Schedule is not appended to the 2016 Regulations on the version available on the CCP website. http://www.cc.gov.pk/images/Downloads/regulations/updated/merger_regulations_2016.pdf At present, the CCP is continuing to process applications made on the basis of the Schedule appended to the 2007 Regulations.