

Investment in Private Companies by Closed End Mutual Funds

Opinion: 1 of 4

Mr. Reaz Islam
Chief Executive Officer
LR Global Bangladesh Asset Management Company Ltd.
Concord IK Tower (4th Floor)
Plot 2, Block CEN (A)
Gulshan-2, Dhaka 1212

RE: **Legal Opinion on investment in private equity by the Mutual Funds managed by L.R Global Bangladesh Asset Management Company Limited ("LRGB")**

Dear Mr. Islam,

We write with reference to your email dated 25 and telephonic conversation with you, whereby you have sought our opinion regarding investments in private companies (hereinafter referred to as "private equity") by some of the mutual funds managed by LRGB, namely (1) DBH 1st Mutual Fund (2) Green Delta Mutual Fund (3) AIBL 1st Islamic Mutual Fund ("AIBL") (4) MBL 1st Mutual Fund (5) LR Global Bangladesh Mutual Fund One (6) NCCBL Mutual Fund-1 (collectively referred to as "Mutual Funds").

In connection to the above query you have forwarded us the following documents:

- a) Trust deeds dated 03.11.2010, 27.04.2010, 23.06.2010, 19.04.2010, 30.03.2010, 7.09.2009 for the above mentioned Mutual Funds
- b) Prospectuses for the above mentioned Mutual Funds

It appears from the perusal of the documents that you have forwarded that all the relevant aspects relating to the Trust Deeds and the Prospectuses are identical except the investment objective contained in the prospectus of AIBL 1st Islamic Mutual Fund. Therefore, for the sake of convenience and to avoid duplication, any reference to mutual funds in this opinion may be taken as a reference to all the Mutual Funds mentioned above unless otherwise specified.

In order to provide you with this opinion we have examined the following:

- a) The Security and Exchange Ordinance 1969 ("the Ordinance 1969");
- b) The Security and Exchange Commission Act 1993 ("the SEC Act");



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Avenue, Narayn Bazar, Dhaka 1212 Bangladesh

- c) The Securities and Exchange Commission (Mutual Fund) Rules 2001 ("the Rules"); and
- d) The Companies Act 1994 ("the Companies Act").

It would appear from perusal of the relevant provisions of law that any investment to be made by the Mutual Funds is governed by the Rules along with the Trust Deed and Prospectus governing each Mutual Fund. As per Rules 55 and 56, the scope of investment by a mutual fund is guided by two important factors namely (i) the stated investment objectives of a mutual fund contained in its prospectuses as approved by the Securities and Exchange Commission ("**the Commission**") and (ii) the investment restrictions. Upon perusal of the relevant provisions of the Rules, the Trust Deeds and the Prospectuses our opinion as to the legality of investment in private equity by the Mutual Funds is as follows:

The Rules

In order to determine the extent of allowable investment in private equity by the Mutual Funds, it is vital to carefully analyse the provisions set out in the Rules. The Rules require the Mutual Funds to have certain investment objectives and also provide an exhaustive list of restrictions which the mutual funds have to comply with.

Rule 55 of the Rules specifies the investment objectives applicable to mutual funds. It states that the funds under a scheme of a mutual fund may be invested *only* in securities listed with the stock exchange, securities issued under initial public offering ("IPO"), all instruments relating to money market, and pre-IPO placements as approved by the Commission. The Rule further provides that at least 75% (seventy-five percent) of the funds should be invested in the capital market, out of which 50% (fifty percent) should be invested in listed securities. Rule 55 also permits investment by one scheme of a mutual fund into another scheme of the same mutual fund where 7 (seven) days prior written notice specifying the amount and time is provided to the Commission and to the relevant stock exchange by the asset manager.

Rule 56 of the Rules stipulates the investment restrictions with regard to mutual funds. It states that the asset manager, prior to taking any investment decision, should duly consider and analyse the financial conditions of the securities it intends to invest in. Furthermore the asset manager should also consider the broad investment objectives provided in Rule 55 and the specific investment restrictions as listed in the 5th schedule of the Rules.

The 5th schedule of the Rules contains the following restrictions:

- 1) The mutual fund shall not provide term loan or advance loan for any reason.
- 2) No single scheme of a mutual fund shall invest more than 10% of its total assets in one particular company.

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- 3) Mutual fund shall not invest in more than 15% of a company's total paid up capital.
 - 4) Mutual fund shall not invest more than 20% in shares, debentures or other securities of any single company or group.
 - 5) Mutual fund shall not invest more than 25% of its total assets in the shares, debentures or other securities of any single industry. However, this restriction shall not apply to mutual funds which are established with the purpose of investment in particular industries provided clear declaration of such focused investment is incorporated in the approved prospectus.
 - 6) Mutual funds shall be able to transfer its investment in securities from one scheme to another. However, such transfer shall be accepted provided the transaction in listed securities is conducted at current market price in the spot market and the stated objectives of the scheme do not conflict with the securities that are transferred.
 - 7) Mutual fund schemes under the common management of an asset manager shall not invest or provide loan to each other.
 - 8) Mutual fund shall not be permitted to take loan for the purpose of investment.
 - 9) The initial issue expenses in respect of any scheme shall not exceed five per cent of the funds raised under that scheme, estimated head wise expenses of which shall be mentioned in the Prospectus.
 - 10) Without prejudice to clauses 1 to 9, excluding the initial issue expenses of the Fund, the total expenses charged shall not be more than four per cent of the average weekly net assets of an accounting year.

Rule 57 provides further restrictions to the scope of investments by stating that mutual funds are not allowed to invest in option trading, short selling or carry forward transactions.

An analysis of the relevant rules portray that the objectives and the restrictions laid down in the 5th schedule of the Rules allow investments by mutual funds in "companies". It is pertinent to mention here that Rule 55 states the investment "objectives", as opposed to "restrictions" pertaining to investments by Mutual Funds. As such, though the said Rule 55 purports to limit the investments by mutual funds to stock exchange listed securities, securities issued under initial public offering ("IPO"), all instruments relating to money market, and pre-IPO placements, this, if read with the "restrictions" imposed on the Mutual Fund investments by Rule 56 and 5th Schedule to the Rules, appears to have been broadened the scope in as much as Rule 56 read with 5th Schedule mentions "companies" as opposed to "publicly listed companies", thus delimiting the range of securities in which the Mutual Funds can invest.

In the absence of a specific definition provided in the Rules, in interpreting the term "company", we should rely on the definition of the term provided in section 2(c) of the Companies Act, 1994. As per the said Act, "company" means a company formed and

registered under the Companies Act, 1994 or an existing company. Thus the term "company" encompasses both public and private companies. As such, in light of the Rules 55, 56 and 57 read along with the 5th schedule in relation to the investment objectives and investment restrictions, in our opinion there is no bar for the mutual funds to invest in private equity as long as the mutual funds strictly comply with the restrictions provided in the 5th schedule of the Rules.

The Trust Deeds

The Trust Deeds are fundamental documents governing the operation and management of mutual funds. They contain provisions entitled "Objectives" and "Investment Parameters" which contain the scope of investment for that particular mutual fund. The relevant provisions from the Trust Deeds are provided below:

a) Objectives:

- I. As per clause 1.9 of the Trust Deed, the Asset Management Company shall issue by way of Pre-IPO placement and Initial Public Offering and operation of the Mutual Fund in the capital market of Bangladesh, on approval from the Regulatory Authority. However, in our opinion, this is merely an "objective" of the Mutual Funds, not a "restriction" per se, restraining the Mutual Funds to invest in the private equity.

b) Investment Parameters:

- I. As per clause 3.2.1 of the Trust Deeds, the mutual funds shall invest subject to the Rules and only in those securities, deposits and investments approved by the Commission and/or Bangladesh Bank and/or the Insurance Regulatory Authority ("IRA") of Bangladesh or any other competent authority in this regard.
- II. Clause 3.2.12 of the Trust Deeds states that all money collected under the mutual funds except the portion of fixed income securities or hedging instruments, if any, shall be invested only in en-cashable/transferrable instruments, securities whether in money market or capital market or privately placed pre-IPO equity, preference shares, debentures or securitized debts.
- III. Clause 3.2.19 states that the mutual funds shall follow the method approved by the Commission for valuation of any non-traded investments, the Asset Management Company and the trustee shall at least annually review the non-listed investments, if any, and the trustee shall at least annually review the value of such investments. The auditors will comment on such investments in the annual report of the mutual fund.

The aforesaid clauses, read together, indicate that as long as the securities invested in by the Mutual Funds are en-cashable/transferrable, the Mutual Funds may invest in

such securities provided the same is approved by the Commission or any other regulatory body. Since the Commission has approved investment in en-cashable/transferrable securities by way of approving the Trust Deed without any reservation, in our opinion, there is no restriction on the investment in private equity by the asset manager since the "en-cashable/transferable securities" inevitably include the private equity.

Furthermore, we are of the view that investment in private equity by Mutual Funds is further acknowledged by the Commission by recognizing the imposition of compulsory annual review of investments made in non-listed securities, indicating that Mutual Funds are permitted to invest in non-listed securities (which include the securities issued by a private company) subject to compliance of certain regulatory provisions. We have been informed that reports of private equity investments have been previously submitted to the Commission and approved by it, which further point towards the legitimacy and endorsement by the Commission of the private equity investments by the Mutual Funds.

Prospectus

Prospectus is defined in clause 2.1.16 of the Trust Deeds as advertisements or other documents as approved by the Commission, which contain information relating to investment in respect of the Mutual Funds, as required by the Rules and is circulated to invite the public to invest in the Mutual Funds. The prospectuses of the Mutual Funds managed by LRGB except AIBL 1st Islamic Mutual Fund contain similar investment objectives in clause 3.1 which is *"to earn superior risk adjusted return by maintaining a diversified investment portfolio and provide attractive dividend payments to the unit-holders."* The investment objective of AIBL 1st Islamic Mutual Fund is as follows:

"The objective of AIBL 1st Islamic Mutual Fund is to earn superior risk adjusted return by maintaining a diversified investment portfolio and provide attractive dividend payments to the unit-holders. The Fund may also invest in other Shariah Compliant instruments as and when they are available for investment including but not limited to Term Certificates, Modaraba Certificate, Musharika, Term Finance Certificates and all other asset backed securities and in other instruments that may be allowed by the rule with consultation with the Trustee and the Fund's Shariah Advisors from time to time. The Trust may appoint one or more Shariah Advisors as and when needed based upon the requirement of the fund."

Although no universal consensus exists among contemporary Shariah scholars on the prohibition of companies, most Shariah boards have advised against investment in companies involved in the activities of conventional Banks, Insurance, and Leasing Companies, Alcohol, Pork related products, Tobacco, Weapons, and Defense, and Casinos/Gambling, Pornography, etc. As such AIBL 1st Islamic Mutual fund shall not invest in such companies."

Furthermore, clause 3.3 of the Prospectuses contains a list of investment restrictions which the Mutual Funds have to abide by. The restrictions provided in the Prospectuses are similar to the list of investment restrictions contained in 5th Schedule of the Rules and the Investment Parameters provided in clause 3.2 of the Trust Deeds. Among other

restrictions, clause 3.3 (4) of the Prospectuses state that all money collected under the Mutual Funds except for the part of fixed income and hedging instruments shall be invested only in en-cashable/transferable instruments, securities whether in money market or capital market or privately placed pre-IPO equity, preference shares and debentures or securities debts.

Upon analysis of the investment objectives as stated in clause 3.1 the Prospectuses of the Mutual Funds managed by LRGB including AIBL 1st Islamic Mutual Fund, and the Investment Restrictions in clause 3.3, in our opinion, there appears to be no bar on the Mutual Funds from investing in private equity as long as the investments are en-cashable/transferable.

It is also pertinent to mention here that, the Trust Deeds and the Prospectuses, as core documents guiding the investment prospects of the Mutual Funds have been vetted and approved by the Commission and in approving the same, the Commission made no reservations as to the investment by Mutual Funds in private equity.

In view of the above analysis of the Rules, the Trust Deeds and the Prospectuses, we are of the opinion that investment by Mutual Funds in private equity is permitted provided the asset managers strictly comply with the Rules and any decisions taken by them remain within the ambit of the restrictions.

We hope this is sufficient for your present purpose.

Yours sincerely,

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Investment in Private Companies by Closed End Mutual Funds

Opinion: 2 of 4

Dhaka

Mr. Reaz Islam
Chief Executive Officer
LR Global Bangladesh Asset Management Company Ltd.
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Plot 2, Block CEN (A)
Gulshan 2, Dhaka 1212

Subject: Revised legal opinion regarding Mutual Funds investments' considering amendment to the Securities and Exchange Commission (Mutual Fund) Rules 2001

Dear Sir,

Thank you for your letter dated 01.02.2019 wherein you have sought our revised legal opinion regarding investment in private companies (broadly defined as 'private equity') by your mutual funds namely (i) DBH First Mutual Fund, (ii) AIBL 1st Islamic Mutual Fund, (iii) Green Delta Mutual Fund, (iv) MBL 1st Mutual Fund, (v) NCCBL Mutual Fund – 1, and (vi) LR Global Bangladesh Mutual Fund One.

We acknowledge the receipt of the relevant trust deeds, investment management agreements, custodian agreements and prospectuses relating to the mutual funds. We find that all the relevant aspects (discussed below) relating to the trust deeds, investment management agreements, custodian agreements, and prospectuses are identical except the investment objective contained in the prospectus of AIBL 1st Islamic Mutual Fund. Therefore, for the sake of convenience and to avoid repetition, this legal opinion shall apply to all mutual funds unless otherwise provided within the legal opinion.

To address the issue of investments in private companies by the mutual funds, the entire scope of investment of a particular mutual fund must be taken into consideration. There are two aspects which dictate the scope of investment of a mutual fund, one being the stated investment objectives of a mutual fund contained in its prospectuses as approved by the Bangladesh Securities and Exchange Commission (BSEC) and the other being applicable investment restrictions. The Securities and Exchange Commission (Mutual Fund) Rules 2001 (MF Rules) including amendments therein, broadly stipulate objectives which a mutual fund should have and also contains an exhaustive list of restrictions under which a mutual fund shall operate. In addition, to the MF Rules, the BSEC vets and approves all core documents (namely trust deed, investment management agreement, custodian agreement and

prospectus) relating to a mutual fund. Amongst the core documents, the vetted and approved trust deed and prospectus of a mutual fund may further expand or limit the scope of the investment objective and impose additional investment restrictions.

Accordingly, we shall focus on the MF Rules regarding investment objectives and restrictions, along with vetted and approved trust deeds and prospectuses of the mutual funds in order to ascertain the legality of investment in private companies by the mutual funds. Our analysis of the MF Rules, trust deeds and prospectuses are provided below:

MF Rules:

Investment objective: Rule 55 of the MF Rules broadly stipulates investment objective. It states that the amount collected under a scheme of a mutual fund should be invested in securities listed with the stock exchange, securities issued under initial public offering (IPO), all instruments relating to money market (which includes all instruments in the securities market, short term commercial paper, commercial bill, treasury bill, fixed deposits and usance bill), pre-IPO placements as approved by the BSEC and at least 60% of the collected amount should be invested in the capital market, out of which 50% should be invested in listed securities. However, it should be noted that if investment into the mutual funds own scheme is intended then a 7 days prior written notice specifying the amount and time should be provided to the BSEC and the relevant stock exchange/s by the asset manager.

Investment restrictions: Rule 56 of the MF Rules stipulates investment restrictions. It states that the asset manager prior to taking any investment decision should duly consider and analyze the financial conditions of the securities it intends to investment in. Furthermore, the asset manager should also consider the broad investment objectives as stated under Rule 55 and the specific investment restrictions as listed in the 5th Schedule of the MF Rules.

The 5th Schedule of the MF Rules contains the following investment restrictions:

1. Mutual fund shall not provide term loan or advance for any reason.
2. No single scheme of a mutual fund shall invest more than 10% of its total assets in one particular company.
3. Mutual fund shall not invest in more than 15% of a company's total paid up capital.
4. Mutual fund shall not invest more than 20% in shares, debentures or other securities of any single company or group.

5. Mutual fund shall not invest more than 25% of its total assets in the shares, debentures or other securities of any single industry. However, this restriction shall not apply to mutual funds which are established with the purpose of investment in particular industries provided clear declaration of such focused investment is incorporated in the approved prospectus.
6. Mutual funds shall be able to transfer its investment in securities from one scheme to another. However, such transfer shall be accepted provided the transaction in listed securities is conducted at current market price in the spot market and the stated objectives of the scheme do not conflict with the securities that are transferred.
7. Mutual fund schemes under the common management of an asset manager shall not invest or provide loan to each other.
8. Mutual fund shall not be permitted to take loan for the purpose of investment.

Considering the above MF Rules relating to investment objective and investment restrictions, there appears to be no bar for the mutual funds to invest in private companies (i.e. private equity). Investment restrictions under the 5th Schedule as stated above, has clear reference to investment in companies which provides a limit but does not bar investments in companies. Company is defined under section 2 (d) of the Companies Act 1994 and includes both public companies as defined under section 2 (j) and private companies as defined under section 2 (k) of the Companies Act 1994.

So there is no legal impediment on the part of an asset manager to invest in a company, either private or public, in the form of purchasing shares and becoming a shareholder thereof, provided the asset manager strictly complies with the investment restrictions as mentioned in the 5th Schedule of the MF Rules.

Trust Deed:

The trust deed is one of the core documents for a mutual fund and functions as a guiding document for the investment management agreement and the prospectus and is carefully vetted and approved by the BSEC. The trust deed contains certain parameters relating to investment which must be maintained and followed by the asset manager notwithstanding the asset manager's authority to take investment decisions for a mutual fund.

We would like to draw your particular attention to clause 3.2.12 of the trust deed which states that all money collected under the mutual fund except the portion of fixed income securities or hedging

instruments, if any, shall be invested only in en-cashable and or transferable instruments, securities whether in money market or capital market or privately placed pre-IPO equity, preference shares, debentures or securitized debts. Furthermore, clause 3.2.19 of the trust deed refers to non-listed investments, and it states that the asset manager and the trustee shall at least annually review the non-listed investments, if any, and the trustee shall at least annually review the value of such investments. The auditors shall comment on such investments in the annual report of the mutual fund. All unlisted securities in Private Companies (i.e. Private Equity) shall fall under this category.

Upon analysis of the above mentioned clauses 3.2.12 and 3.2.19 of the trust deed, we are of the opinion that the asset manager has the discretion to invest in private companies (i.e. private equity) provided the securities invested in are en-cashable and/or transferable and the acknowledgment of such a possibility of investment in private companies (i.e. private equity) is made under clause 3.2.19 by imposing a compulsory annual review of the value of such investments in non-listed securities (includes securities of private companies) by the asset manager and the trustee in addition to such investment being commented by the auditor in the annual report.

Prospectus:

The prospectus is the main public document that is vetted and individually approved by the BSEC and contains the particular information relating to a specific mutual fund. All prospectuses are drafted under the general guidelines provided in the MF Rules but may contain very different investment objectives and additional investment restrictions. The prospectuses contain specific details of the investment objectives and investment restrictions relating to the particular mutual fund which is then further vetted and approved by the BSEC.

To further clarify our point, we would like to draw your attention to clause 3.1 of the prospectuses of DBH First Mutual Fund and AIBL 1st Islamic Mutual Fund containing the investment objectives, which is stated as follows:

Clause 3.1 of DBH First Mutual Fund

“The objective of DBH First Mutual Fund is to earn superior risk adjusted return by maintaining a diversified investment portfolio and provide attractive dividend payments to the unit holders.”

Clause 3.1 of AIBL 1st Islamic Mutual Fund

"The objective of AIBL 1st Islamic Mutual Fund is to earn superior risk adjusted return by maintaining a diversified investment portfolio and provide attractive dividend payments to the unit holders. The Fund may also invest in other Shariah Compliant Instruments as and when they are available for investment including but not limited to Term Certificates, Modaraba Certificates, Musharika, Term Finance Certificates and all other asset backed securities and in other instruments that may be allowed by the rules with consultation with the Trustee and the Fund's Shariah Advisors from time to time. The Trust may appoint one or more Shariah Advisors as and when needed based upon the requirement of the fund.

Although no universal consensus exists among contemporary Shariah scholars on the prohibition of companies, most Shariah boards have advised against investment in companies involved in the activities of conventional Banks, Insurance and Leasing Companies, Alcohol, Pork related products, Tobacco, Weapons and Defense, and Casinos/Gambling, Pornography, etc. As such AIBL 1st Islamic Mutual Fund shall not invest in such companies."

It is evident considering the above that the investment objective of mutual funds may be very different and unique although all mutual funds' investment objectives are broadly under the Rule 55 of the MF Rules.

Furthermore, in addition to the investment restrictions as stipulated in the MF Rules 56 and the 5th Schedule, particular investment restrictions are also stated in the prospectuses under clause 3.3. Amongst the various investment restrictions stated in the prospectuses, we would like to draw your attention to clause 3.3 4), which states that all money collected under the Fund except for the part of fixed income and hedging instruments shall be invested only in en-cashable and/or transferable instruments, securities whether in money market or capital market or privately placed pre-IPO equity, preference shares, and debentures or security debts.

Upon analysis of clause 3.3 4) of the prospectuses, we are of the opinion that the asset manager has the discretion to invest in securities in private companies (i.e. private equity) provided the securities invested in are en-cashable and/or transferable and in the event of such investments there has to be a compulsory annual review of the value of such investments in non-listed securities (includes securities of private companies) by the asset manager and the trustee in addition to such investment being commented by the auditor in the annual reports of the mutual fund as per clause 3.4 3) of the prospectuses.

Conclusion:

We have conducted an analysis and scrutiny of the MF Rules and mutual fund documents, particularly the trust deeds and prospectuses, and upon considering all the above aspects relating to MF Rules, investment objectives and investment restrictions, it appears that investment in private companies (i.e. private equity) should be eligible by all the mutual funds including the AIBL 1st Islamic Mutual Fund.

Nonetheless, in the event investment in private companies is made by the mutual funds, the asset manager must take care to ensure that the securities acquired through such investment are en-cashable and transferable. Please note that special care has to be taken when it comes to investment in private companies by AIBL 1st Islamic Mutual Fund since the mutual fund's objective is to make investments which are acceptable under the Shariah.

Additionally, the asset manager should ensure that annual review of such investments in private companies (i.e. private equity) are conducted on a regular basis and further disclosed and commented on by the auditor in the annual reports as prescribed by the other applicable rules.

Please do not hesitate to contact us if you have any further queries.

Yours sincerely,

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Opinion: 3 of 4

Head of Chambers

Partners

BIZ/DOC/1

Date: _____

Chief Executive Officer

LR Global Bangladesh Asset Management Company Ltd.
Concord TK Tower (4th Floor)
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Re: Legal Opinion on investment in private equity by Mutual Funds managed by LR Global Bangladesh Asset Management Company Limited. ("LRGB").

Dear Sir,

Please refer to your instructions of _____. You have sought our opinion as to the legality of investment in private companies (i.e. private equity) by a number of mutual funds managed by LRGB, namely (i) DBH First Mutual Fund, (ii) AIBL 1st Islamic Mutual Fund, (iii) Green Delta Mutual Fund, (iv) MBI 1st Mutual Fund, (v) NCCBI Mutual Fund - 1, and (vi) LR Global Bangladesh Mutual Fund One.

We have examined the trust deeds, investment management agreements, custodian agreements and prospectuses relating to the mutual funds. The relevant aspects of the trust deeds, investment management agreements, custodian agreements, and prospectuses are broadly similar. Therefore, for the sake of convenience, a reference to mutual funds in this opinion may be deemed to be a reference to all mutual funds unless otherwise specified.

The legislation governing the investment by mutual funds is the Securities and Exchange Commission (Mutual Fund) Rules, 2001 ("the Rules"). Under the Rules, two major factors determine the scope of investment by a mutual fund (i) the stated investment objectives of a mutual fund contained in its prospectuses as approved by the Securities and Exchange Commission ("the Commission") and (ii) the investment restrictions. As such the legality of the investment by mutual funds in private equity is required to be determined in light of the Rules as well as the relevant Trust Deeds and Prospectuses. Our opinion on the issue raised is as follows:-



1. Investment Objectives under the Rules:

1.1 Rule 55 of the Rules specifies the lawful investment objectives of a mutual fund. It states that the funds under a scheme of a mutual fund may be invested in securities listed with the stock exchange, securities issued under initial public offering (IPO), all instruments relating to money market, and pre-IPO placements as approved by the Commission. The Rule further specifies that at least 75% of the funds should be invested in the capital market, of which 50% should be invested in listed securities.

1.2 Rule 55 also allows investment by one scheme of a mutual fund into another scheme of the same mutual fund where 7 days prior written notice specifying the amount and time is provided to the Commission and the relevant stock exchange/s by the asset manager.

2. Investment Restrictions under the Rules

2.1 The 5th Schedule read with Rule 56 of the Rules stipulates the restrictions on investments. It states that the asset manager prior to taking any investment The 5th Schedule specifies the following restrictions:

- i. Mutual fund shall not provide term loan or advance for any reason.
- ii. No single scheme of a mutual fund shall invest more than 10% of its total assets in one particular company.
- iii. Mutual fund shall not invest in more than 15% of a company's total paid up capital.
- iv. Mutual fund shall not invest more than 20% in shares, debentures or other securities of any single company or group.
- v. Mutual fund shall not invest more than 25% of its total assets in the shares, debentures or other securities of any single industry. However, this restriction shall not apply to mutual funds which are established with the purpose of investment in particular industries provided clear declaration of such focused investment is incorporated in the approved prospectus.
- vi. Mutual funds shall be able to transfer its investment in securities from one scheme to another. However, such transfer shall be accepted provided the transaction in listed securities is conducted at current market price in the spot market and the stated objectives of the scheme do not conflict with the securities that are transferred.
- vii. Mutual fund schemes under the common management of an asset manager shall not invest or provide loan to each other.

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viii. Mutual fund shall not be permitted to take loan for the purpose of investment.

2.2 In view of the Rules relating to investment objective and investment restrictions, there appears to be no bar for the mutual funds to invest in private companies (i.e. private equity). The restrictions under the 5th Schedule does not bar investments in companies. Company is defined under section 2(d) of the Companies Act 1994 and includes both public companies as defined under section 2 (j) and private companies as defined under section 2 (k) of the Companies Act 1994. So there is no legal impediment on the part of an asset manager to invest in a company, either private or public. However, the asset manager strictly complies with the investment restrictions specified in the 5th Schedule of the Rules.

3. Trust Deed

3.1 The trust deed is one of the important documents in relation to a mutual fund. This document is examined and approved by the Commission. The trust deed contains the parameters relating to investment which is required to be observed by the asset manager.

3.2 Clause 3.2.12 of the trust deed states that all funds collected under the mutual fund except the portion of fixed income securities or hedging instruments, if any, shall be invested only in en-cashable and or transferable instruments, securities whether in money market or capital market or privately placed pre-IPO equity, preference shares, debentures or securitized debts. Furthermore, clause 3.2.19 of the trust deed states that the asset manager and the trustee shall annually review the non-listed investments, if any, and the trustee shall annually review the value of such investments. Auditors are also required to comment on such investments in the annual report of the mutual fund. All non-listed securities in private companies (i.e. private equity) fall under this category.

3.3 It is our opinion, that in view of clauses 3.2.12 and 3.2.19 of the trust deed, the asset manager has the discretion to invest in private equity. However, the securities invested in should be en-cashable and/or transferable. The possibility of investment in private equity is acknowledged under clause 3.2.19 by imposing a compulsory annual review of the value of such investments in non-listed securities (including securities of private companies) by the asset manager and the trustee in addition to the auditor in the annual report.

4. Prospectus:

4.1 The prospectus is the public document (approved by the Commission) that contains all the relevant investment information relating to each mutual fund. Prospectuses are prepared in accordance with the Rules but may contain different investment objectives and additional investment restrictions.

4.3 In addition to the investment restrictions in the Rules, further restrictions are also provided in the prospectuses under clause 3.3. Amongst the various restrictions in the prospectuses, clause 3.3 4, states that all funds collected under the mutual fund (excluding the fixed income and hedging instruments) shall be invested only in en-cashable and/or transferable

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instruments, securities whether in money market or capital market or privately placed pre-IPO equity, preference shares, and debentures or security debts.

4.4 Upon consideration of clause 3.3 4 of the prospectuses, it is apparent that the asset manager has the discretion to invest in private equity provided the securities are en-cashable and/or transferable and in the event there is a compulsory annual review of the value of such investments in such securities by the asset manager and the trustee in addition to the auditor in the annual reports of the mutual fund as per clause 3.4 3 of the prospectuses.

5. Conclusion:

5.1 That upon examination of the Rules, the Trust Deeds and the Prospectuses, it is our opinion that investment by mutual fund in private companies (i.e. private equity) is not barred. However, the asset manager should take care to ensure that the securities acquired through such investment are en-cashable and transferable. Further, the asset manager should ensure that annual review of investments in private companies (i.e. private equity) is conducted on a regular basis and the investments are examined by the auditor in the annual reports.

This is all we have to say at this stage. However, if you have any further queries please do not hesitate to contact us.

Yours sincerely,



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75% of the amount mentioned in Sub Rule (1) shall be invested in Securities Market out of which at least half of the amount shall be invested in the listed Securities of Stock Exchange.

However, if investment is to be made in any scheme of that mutual fund then written notice of at least 7 days are to be given to the Commission and relevant Stock Exchange stating the amount of the investment and time of investment.

1. Besides the aforesaid objectives other objectives are important to achieve the purpose of investing mutual fund , such as:
 - i. Mutual funds and securities investments are subject to market risks and there can be no assurance or guarantee that the Fund's objectives will be achieved. As with any investment in securities, the Net Asset Value of the Fund may go up or down depending on the various factors and forces affecting the capital markets.
 - ii. The Bangladesh capital market is highly volatile and mutual fund prices and prices of securities can fluctuate significantly. The Fund may lose its value or incur a sizable loss on its investments due to such market volatility. Stock market trends indicate that prices of majority of all the listed securities move in unpredictable direction which may affect the value of the Fund. Furthermore, there is no guarantee that the market prices of the units of the Fund will fully reflect their underlying Net Asset Values.
 - iii. Due to a limited number of listed securities in both the DSE and CSE, it may be difficult to invest the Fund's assets in a widely diversified portfolio as and when required to do so. Due to a very thin secondary fixed income/debt market in Bangladesh, it would be difficult for the Fund Manager to swap between asset classes, if and when required.

Limited options in the money market instruments will narrow the opportunity of short term or temporary investments of the Fund which may adversely impact the returns.

- iv. Despite careful investment selection of companies in the Fund, if the companies fail to provide the expected dividend or fail to disburse the dividends declared in a timely manner, this will impact the income of the Fund and the overall return of the Fund.
- v. For investing in Pre-Public Offer Placement securities i.e. in unlisted equity Securities by the Fund, may involve liquidity risk. In addition, market conditions and investment allocation may have an impact on the ability to sell securities during periods of market volatility. Debt securities, while somewhat less liquid, lack a well-developed secondary market, which may restrict the selling ability of the Fund and may lead to the Fund incurring losses till the security is finally sold. While securities that are listed on the stock exchange carry lower liquidity risk, the ability to sell these investments is limited by the overall trading volume on the stock exchanges and may lead to the Fund incurring losses till the security is finally sold.
- vi. Since the Fund will seek to also invest as per the Mutual Fund Regulations (2001) in both equity and fixed income securities, the credit risk of the fixed income issuers is also associated with the Fund. Investment in fixed income securities are subject to the risk of an issuer's inability to meet interest and principal payments on its obligations and market perception of the creditworthiness of the issuer.
- vii. In addition to market and price risk, value of an individual security can, in addition, be subject to factors unique or specific to the issuer,

including but not limited to management malfeasance, lack of accounting transparency, management performance, management decision to take on financial leverage. Such risk can develop in an unpredictable fashion and can only be partially mitigated, and sometimes not at all, through research or due diligence. To the degree that the Fund is exposed to a security whose value declines due to issuer risk, the Fund's value may be impaired.


Investment restrictions as per Security and Exchange Commission Rules 2001

Rule 56 of the Security Exchange and Commission (Mutual Fund) Rules 2001 states that- *The Asset Management Company shall analysis the finance of relevant Security Exchange's before making an investment decision and according to the rule 55, the investment shall be maintained in accordance with Schedule V.*

Rule 57 of the Security Exchange and Commission (Mutual Fund) Rules 2001 states that- *The amount of mutual fund shall not be used in Option trading, Short selling or in carry forward.*

Therefore considering the same we think the following investment restrictions should be taken into consideration:

- i. The Fund shall not invest in or lend to another Scheme under the same Asset Management Company.
- ii. The Fund shall not acquire any asset out of the Trust property, which involves the assumption of any liability that is unlimited or shall result in encumbrance of the Trust property in any way.

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- iii. The Fund or the Asset Management Company on behalf of the Fund shall not give or guarantee term loans for any purpose or take up any activity in contravention of the Security and Exchange Commission Rules 2001.
 - iv. All money collected under the Fund except for the part of fixed income and hedging instruments shall be invested only in transferable instruments, securities whether in money market or capital market or privately placed Pre-IPO equity, preference shares, and debentures or securities debts.
 - v. The Fund shall not involve itself in option trading or short selling or carry forward transaction.
 - vi. The Fund shall not buy its own unit.
 - vii. The Fund shall not take any loan.

The following restrictions will also be applicable for the Asset Management Company:


- i. The Asset Management Company shall take all reasonable steps and exercise all due diligence and ensure that the investment of the Fund are not contrary to the provisions of the Trust Deed and the Rules.
- ii. The Asset Management Company shall not act as Trustee of any mutual fund and shall not undertake any other business of activities, without prior approval of the Commission, which may adversely affect the interest of the Fund.
- iii. The Asset Management Company shall furnish such information and documents to the CDBL as may be required under the ডিপজিটরি আইন, ১৯৯৯, ডিপজিটরি প্রবিধানমালা,

২০০০ and ডিপজিটরি (ব্যবহারিক) প্রবিধানমালা,
২০০৩.

**Whether investment can be made in Private Limited Companies through
Mutual Funds**

1. A Private Limited Company is permitted to make up only a fraction of a mutual fund's portfolio. That's because Securities and Exchange Commission guidelines limit to 15% a mutual fund's total assets that can be invested in "illiquid securities or securities that are delicately traded. Many funds have internal rules that place even lower limits on private investments.
2. Mutual funds face a number of possible drawbacks in making private investments, besides the possible difficulty of finding a buyer. The holdings are difficult to price - a problem for mutual funds, which must assess the value of their holdings each day. Indeed, some funds have faced regulatory sanctions for mispricing private companies. Individual investors can gather how much their funds own in private investments by examining quarterly reports, where any restrictions on the sale of holdings must be disclosed.

If you have any queries regarding the same please do not hesitate to contact with us.

Regards, 


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Barrister-at-Law