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**ISLAMABAD, MONDAY, AUGUST 10, 2020**

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PART III

**Other Notifications, Orders, etc.**

**NATIONAL ASSEMBLY SECRETARIAT**

*Islamabad, the 17th July, 2020*

**No. F. 22(37)/2020-Legis.**—The following Bill has been introduced in the National Assembly on 17th July, 2020.

NA BILL NO. 64 OF 2020

A

BILL

*further to amend the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980*

WHEREAS it is expedient further to amend the *Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980)* for the purposes hereinafter appearing;

It is hereby enacted as follows:—

1121 (1—21)

*Price: Rs. 40.00*

[5847(2020)/Ex. Gaz.]

1. **Short title and commencement.**—(1) This Act shall be called the *Modaraba* Companies and *Modaraba* (Floatation and Control) (Amendment) Act, 2020.

(2) It shall come into force at once.

2. **Amendment of section 1, Ordinance XXXI of 1980.**—In the *Modaraba* Companies and *Modaraba* (Floatation and Control) Ordinance, 1980 (XXXI of 1980), hereinafter called as the said Ordinance, in section 1, in sub-section (1), for the word “Floatation” the word “Establishment” shall be substituted.

3. **Amendment of section 2, Ordinance XXXI of 1980.**—In the said Ordinance, in section 2,—

(i) in sub-section (1), for clauses (a), (ab), (b), (c), (d), (e), (f), (g) and (h), the following shall be substituted, namely:—

“(a) “Act” means the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);

(b) “Commission” means the Commission as defined in the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);

(c) “Companies Act” means the Companies Act, 2017 (XIX of 2017);

(d) “*modaraba*” means a fund, having legal rights and obligations, managed by a *modaraba* company established under this Ordinance in which a person participates with his money and *modaraba* company participates with its efforts and skills;

(e) “*modaraba* certificate” means a certificate of definite denomination issued to the subscriber of the *modaraba* acknowledging receipt of money paid by him;

(f) “*modaraba* company” means a company engaged in the business of establishing and managing *modaraba*;

(g) “*modaraba* fund” means a fund raised through issuance of *modaraba* certificates;

(h) “prescribed” means prescribed by rules;

- (i) “Registrar” means the Registrar appointed under section 3;
  - (j) “regulations” means regulations made under this Ordinance;
  - (k) “rules” means rules made under this Ordinance;
  - (l) “Schedule” means schedule appended to this Ordinance;
  - (m) “*Shariah* Board” means *Shariah* Board constituted under section 9;
  - (n) “specified” means specified through regulations made by the Commission under this Ordinance; and
  - (o) “Tribunal” means a Tribunal constituted under section 24.”; and
- (ii) in sub-section (2), for the expression “Companies Act, 1913 (VII of 1913)” the words “the Act and the Companies Act” shall be substituted.

4. **Amendment of section 5, Ordinance XXXI of 1980.**—In the said Ordinance, in section 5, in sub-section (1),—

- (a) the expression “(1)” shall be omitted;
- (b) in clause (a), for the expression “Companies Act, 1913 (VII of 1913)” the expression “Companies Act” shall be substituted;
- (c) for clause (b), the following shall be substituted, namely:—

“(b) its promoters, chief executive and directors shall fulfill such fit and proper criteria as may be specified;”;
- (d) in clause (e), the word “and”, occurring at the end, shall be omitted;
- (e) for clause (f), the following shall be substituted, namely:—

“(f) that, it has minimum paid up capital of one million Rupees; and”;
- (f) after clause (f), substituted as aforesaid, the following new clause shall be inserted, namely:—

“(g) any other condition as may be specified.”.

5. **Amendment of section 6, Ordinance XXXI of 1980.**—In the said Ordinance, in section 6, after sub-section (1), the following new sub-section shall be inserted, namely:—

“(1A) The application under sub-section (1) shall be accompanied by such fee as specified in the First Schedule.”.

6. **Amendment of PART III, Ordinance XXXI of 1980.**—In the said Ordinance, in PART III, for the heading, “PROVISIONS APPLICABLE TO *MODARABAS*”, the heading “ESTABLISHMENT AND MANAGEMENT OF A *MODARABA*” shall be substituted.

7. **Amendment of section 7, Ordinance XXXI of 1980.**—In the said Ordinance, in section 7, in sub-section (1), for the word “descriptions”, the word “kinds” shall be substituted.

8. **Insertion of sections 7A and 7B, Ordinance XXXI of 1980.**—In the said Ordinance, after section 7, amended as aforesaid, the following new sections shall be inserted, namely:—

- “7A. **Listing of *modaraba* certificates on the securities exchange.**—(1) The *modaraba* certificates of a *modaraba* established under this Ordinance shall be listed on the securities exchange in accordance with the law.
- (2) The Registrar may allow a *modaraba* company to establish a *modaraba* without listing its *modaraba* certificates on the securities exchange for such period, in such form and manner and subject to such limitations, terms and conditions as may be specified.
- (3) The Registrar may, after evaluating performance of unlisted *modaraba*, established under sub-section (2), allow establishment of the *modaraba*.
- (4) The *modaraba* company shall make arrangements to get the *modaraba* certificates listed on the securities exchange within a period of three years extendable for another period of two years as may be allowed by the Commission from the date of its authorization.
- (5) If the *modaraba* company fails to get the *modaraba* certificates listed on the securities exchange within the time period as provided for in sub-section (4), the Registrar may allow the *modaraba* company to continue managing the *modaraba* without availing exemption from tax referred to in section 37.”.

7B. **Increase in *modaraba* fund and resource mobilization.**—(1) The directors of the *modaraba* company may increase the *modaraba* fund by issuance of further *modaraba* certificates in such form and manner as prescribed under the Companies Act.

(2) In addition to the *modaraba* fund raised by issuance of *modaraba* certificates, a *modaraba* may mobilize further resources subject to such terms and conditions and limitations as may be specified.”.

9. **Substitution of section 8, Ordinance XXXI of 1980.**—In the said Ordinance, for section 8, the following shall be substituted, namely:—

“8. **Establishment and maintenance of *modaraba*.**—(1) A *modaraba* company registered under section 6 shall apply to the Registrar for permission to establish a *modaraba* within a period of six months from the date of its registration or such extended period as the Registrar may deem fit.

(2) An application for establishment of a *modaraba* shall be accompanied by such other documents as may be specified.

(3) Application under sub-section (1) shall be accompanied by such fee as specified in the First Schedule.

(4) The Registrar, after obtaining a certificate from *Shariah* Board to the effect mentioned in section 10 and on being satisfied that it is in the public interest so to do, may grant a certificate of authorization to establish a *modaraba* on such conditions as he may deem fit to impose, including but not limited to -

- (a) business to be undertaken;
- (b) expenses relating to management of the *modaraba*;
- (c) preservation of assets; and
- (d) other matters relating to mode of distribution of profits:

Provided that, before issuing certificate of authorization, the Registrar may require the *modaraba* company to make such modifications, additions or omissions in the prospectus or statement in lieu of prospectus as may be required by the *Shariah* Board.

(5) Subject to approval of the *Shariah* Board, the nature of expenses charged to the *modaraba* company and the *modaraba* shall be as may be specified.”.

10. **Insertion of section 8A, Ordinance XXXI of 1980.**—In the said Ordinance, after section 8, substituted as aforesaid, the following new section shall be inserted, namely:—

“8A. **Voting rights of *modaraba* certificate holders.**—The holders of *modaraba* certificates shall have and exercise voting rights in the same manner as the members of a company exercise under the Companies Act for the matters permissible under this Ordinance.”.

11. **Substitution of sections 9 and 10, Ordinance XXXI of 1980.**—In the said Ordinance, for sections 9 and 10, the following shall be substituted, namely:—

“9. **Shariah Board.**—(1) The Commission shall constitute or designate a *Shariah* Board which shall consist of such number of members, having such qualifications, to perform such functions and subject to such terms and conditions as may be specified.

(2) In addition to the duties and functions of *Shariah* Board provided for under this Ordinance, the *Shariah* Board shall perform such other related functions as may be assigned by the Commission from time to time.

10. **Business of *modaraba*.**—(1) No *modaraba* shall undertake any business activity which is opposed to the principles of *Shariah* and the Registrar shall not permit the establishment of a *modaraba* unless the *Shariah* Board has certified in writing that the business proposed to be undertaken by the *modaraba* is not a business opposed to the principles of *Shariah*.

(2) A *modaraba* company shall ensure that—

(a) the *Shariah* compliance and *Shariah* governance framework as may be notified by the Commission is complied with by a *modaraba* company and *modaraba*; and

(b) the applicable model financing agreements are used in all business transactions entered into by a *modaraba*.

*Explanation.*—For the purposes of this section, the expression “model financing agreements” means such model financing agreements as approved by the *Shariah* Board.”.

12. **Omission of section 11, Ordinance XXXI of 1980.**—In the said Ordinance, section 11 shall be omitted.

13. **Amendment of section 12, Ordinance XXXI of 1980.**—In the said Ordinance, in section 12, for the marginal heading “*Modaraba* to be a legal person” the marginal heading “Status of *modaraba*” shall be substituted.

14. **Amendment of section 13, Ordinance XXXI of 1980.**—In the said Ordinance, in section 13,—

(a) for sub-section (1), the following shall be substituted, namely:—

“(1) A *modaraba* company shall not allot and issue any *modaraba* certificates unless a prospectus approved by the Registrar has been issued and the minimum amount stated in the prospectus or, in case of unlisted *modaraba*, the minimum amount stated in the statement in lieu of prospectus, as the case may be, to be the amount which must be raised in order to provide for the business operations and expenses, has been subscribed.”;

(b) in sub-section (2),—

(i) after the word “separate”, the words “Islamic banking” shall be inserted; and

(ii) for the words “in an amount not less than”, the words “and issued for” shall be substituted; and

(c) in sub-section (8), the words “in the prospectus of the *modaraba*” shall be omitted.

15. **Substitution of section 14, Ordinance XXXI of 1980.**—In the said Ordinance, for section 14, the following shall be substituted, namely:—

“14. **Annual general meeting, preparation and circulation of annual financial statements and reports.**—(1) Every *modaraba* company shall hold an annual general meeting of *modaraba* certificate holders of each *modaraba* managed by it in a manner as provided for in the Companies Act.

(2) The *modaraba* company shall prepare the financial statements of the *modaraba* in such form and manner as may be specified.

(3) The *modaraba* company shall lay before the *modaraba* certificate holders the financial statements of the *modaraba* in the time and manner as provided for in the Companies Act.

- (4) The Registrar may for reasons to be recorded in writing extend the time in holding of annual general meeting and circulation of financial statements in the manner as provided for in the Companies Act.
- (5) A copy of the financial statements and reports shall be simultaneously filed with the Registrar electronically or in such manner as may be specified.”.

16. **Amendment of section 15, Ordinance XXXI of 1980.**—In the said Ordinance, in section 15,—

- (a) for the marginal heading “**Audit and accounts**” the marginal heading “**Financial statements and audit**” shall be substituted; and
- (b) for sub-section (1), the following shall be substituted, namely:—

“(1) The financial statements of a *modaraba* shall be audited by an auditor who is a chartered accountant within the meaning of the Chartered Accountants Ordinance, 1961 (X of 1961), fulfilling such criteria as may be specified, appointed in the annual general meeting of the *modaraba* certificate holders and such auditor shall have the same powers, duties and liabilities as an auditor of a company has under the Companies Act and such other powers, duties and liabilities as are, or may be, provided for in this Ordinance, rules and regulations made thereunder.”.

17. **Amendment of section 16, Ordinance XXXI of 1980.**—In the said Ordinance, in section 16,—

- (a) after the word “prospectus”, the words and comma “statement in lieu of prospectus” shall be inserted; and
- (b) after the word “rules”, wherever occurring, the words “or the regulations” shall be inserted.

18. **Amendment of section 17, Ordinance XXXI of 1980.**—In the said Ordinance, in section 17,—

- (a) in sub-section (1), for the word “floated”, the word “established” shall be substituted;



- (b) for sub-sections (2) and (3), the following shall be substituted, namely:—

“(2) No *modaraba* company or any of its directors, shareholders, officers or their relatives, the companies or firms in which any of the above persons is interested as director, partner or shareholder, shall obtain any facility, loan, advance or credit from the fund of the *modaraba* or on the security of the assets of the *modaraba*.

*Explanation.*—In this sub-section, “relative”, in relation to a director or officer, means the spouse, brother or sister or any of the lineal ascendants or descendants of the director or officer.”;

(3) A *modaraba* company shall subscribe in each *modaraba* established by it, such percentage of *modaraba* certificates as may be specified.”; and

- (c) after sub-section (3), substituted as aforesaid, the following new sub-sections shall be added, namely:—

“(4) The Commission may specify minimum and maximum limits and holding period of *modaraba* certificates by a *modaraba* company in a *modaraba* to be established or managed by it.

(5) The *modaraba* certificates subscribed by a *modaraba* company or its promoters at the time of establishment of the *modaraba* shall not be transferred except with prior approval of the Registrar.”.

19. **Substitution of section 18, Ordinance XXXI of 1980.**—In the said Ordinance, for section 18, the following shall be substituted, namely:—

“18. **Sharing of profit between *modaraba* company and *modaraba* certificate holders.**—(1) The share of profit of a *modaraba* company in respect of a *modaraba*, established or managed by it, shall not exceed such percentage of return on equity of the *modaraba* as provided for in the Second Schedule.

(2) A *modaraba* company shall only be entitled to its share of profit if it distributes the profit to the *modaraba* certificate holders.”.

20. **Substitution of section 19, Ordinance XXXI of 1980.**—In the said Ordinance, for section 19, the following shall be substituted, namely:—

“PART-IV

**DISCIPLINARY PROCEEDINGS**

19. **Disciplinary action.**—(1) Where the Registrar is of the opinion that a *modaraba* company, its chief executive or any of its directors at any time has conducted affairs of the *modaraba* prejudicial to the interest of the certificate holder, the Registrar may exercise the following powers as he may consider appropriate in the circumstances of the case, namely:—

- (a) to suspend its registration, whether in relation to all or any of its activities for which it is registered, for such period or until occurrence of such event as the Registrar may specify; or
- (b) to remove the *modaraba* company from management of the *modaraba* managed or established by it; or
- (c) to supersede the board of directors of *modaraba* company; or
- (d) to cancel its registration, whether in relation to all or any of its activities for which it is registered,

and the Registrar may—

- (i) appoint an administrator or a *modaraba* company to run and manage affairs of the *modaraba* established or managed by it, if any; or
- (ii) appoint a new board of directors or require the *modaraba* company to carry out such changes in the management and procedure as may be specified in the order.

(2) No order under this section shall be made without affording a reasonable opportunity of hearing to the *modaraba* company:

Provided that where the Registrar is satisfied that delay in taking action under clause (a) of sub-section (1) may cause serious financial damage to *modaraba* certificate holders or is detrimental to the interest of investors or the public in general, the Registrar shall act immediately after recording reasons in writing till the time an opportunity of hearing is provided and a final decision shall be taken.

(3) Where a person is removed under clause (c) of sub-section (1) the Registrar may authorize any person to act as chairman or director or chief executive of the *modaraba* company till another person is appointed in such

manner and subject to such terms and conditions as may be directed by the Registrar.

(4) No person removed from office under sub-section (1) shall be entitled to claim any compensation for the loss or termination of office.

(5) A *modaraba* company removed from management of a *modaraba*, under clause (b) of sub-section (1), shall not be entitled to establish, manage or float any *modaraba*.

(6) A chairman, director or chief executive of a *modaraba* company removed under clause (c) of sub-section (1) shall not in any way, whether directly or indirectly, be concerned with or take part in management of the *modaraba* or any other *modaraba* for such period not exceeding three years as may be specified in the order.

(7) The Registrar may, for the purposes of this section, exercise any power as provided for in Part IXA of the Act.

(8) The Registrar shall not make an order under this section without approval of the Commission.

**19A. Change of *modaraba* company on application of *modaraba* certificate holders.**—(1) Where *modaraba* certificate holders pass a special resolution for—

- (a) change of *modaraba* company of a *modaraba*; or
- (b) change of chief executive or any of directors of *modaraba* company; or
- (c) an appointment of administrator,

the Registrar may after conducting such enquiry, inspection or investigation, as the case may be, without prejudice to any other action that may be taken under the law, by order in writing—

- (i) change the *modaraba* company of a *modaraba*; or
- (ii) require the *modaraba* company to change its chief executive or any of its directors or carry out such changes in the management and procedure, as may be specified in the order; or
- (iii) appoint an administrator to take over and manage the *modaraba* in place of the *modaraba* company for such period and on such terms

and conditions as the Registrar may specify in the order, extendable from time to time by a subsequent order and before or after the expiry of the period given in the order or in the subsequent order, as the case may be, appoint another *modaraba* company.

(2) The Registrar, before taking any action under this section, may require any other information or document which in the opinion of the Registrar is necessary for disposal of the matter and which establishes that the *modaraba* company is not managing affairs of the *modaraba* in accordance with this Ordinance, rules or regulations or any direction issued thereunder or any condition of the *modaraba* and may pass any order as he deems appropriate.

(3) The Registrar shall not pass an order without providing an opportunity of being heard to the existing *modaraba* company.

(4) The Registrar shall not make an order under this section without approval of the Commission.

**19B. Voluntary change of *modaraba* company.**—If an application is made by a *modaraba* company, in a manner as may be specified, for voluntary change of a *modaraba* company, the Registrar may by an order appoint another *modaraba* company to manage the *modaraba* subject to such terms and conditions as may be specified:

Provided that the Registrar shall before considering any application under this section require the *modaraba* company to call a general meeting of the *modaraba* certificate holders seeking their approval through a special resolution.

**19C. Conditions on minimum holding by a *modaraba* company.**—(1) The outgoing *modaraba* company in terms of section 19, shall not divest its *modaraba* certificates to the extent of minimum holding as provided for in section 17 till such time as may be specified.

(2) The incoming *modaraba* company in terms of section 19 shall acquire minimum holding of *modaraba* certificates as required under section 17.”.

**21. Omission of section 20, Ordinance XXXI of 1980.**—In the said Ordinance, section 20 shall be omitted.

**22. Amendment of heading, Ordinance XXXI of 1980.**—In the said Ordinance, after section 21, for the heading, “WINDING UP”, the following heading shall be substituted, namely:—

“PART-V

**WINDING UP OF MODARABA COMPANY AND MODARABA”.**

23. **Insertion of section 21A, Ordinance XXXI of 1980.**—In the said Ordinance, after section 21 and the heading inserted thereafter as aforesaid, the following new section shall be inserted, namely:—

“21A. **Bar on winding up of a *modaraba* company.**—Notwithstanding anything contained in the Companies Act,—

(a) a *modaraba* company managing a *modaraba* shall neither initiate its voluntary winding up nor file a petition for its winding up unless —

(i) all *modarabas* managed by it have either been transferred or wound up; and

(ii) it has satisfied the Registrar in the manner as it deems fit that it has settled all outstanding claims and liabilities and has obtained prior approval of the Registrar which may, in the interest of the public or interest of investors or *modaraba* certificate holders, impose such conditions as it deems appropriate; and

(iii) it has been deregistered as a *modaraba* company in accordance with the provisions of this Ordinance;

(b) the Tribunal may refuse to entertain petition for winding up of a *modaraba* company, if the Tribunal is satisfied that —

(i) requirements of clause (a) have not been fulfilled;

(ii) petitioner intends to avoid or prejudice investigation of offences under this Ordinance; or

(iii) on any other ground the Tribunal deems fit in the facts and circumstances of the case.”.

24. **Amendment of section 22, Ordinance XXXI of 1980.**—In the said Ordinance, in section 22, in sub-section (1),—

(a) for the word “floated” the words “established” shall be substituted;

(b) for clause (a), the following shall be substituted, namely:—

“(a) all directors of the *modaraba* company shall make a declaration verified by an affidavit that they have made a full enquiry about affairs of the *modaraba* and, having done so, have formed the opinion that the *modaraba* will be able to discharge its claims and liabilities and distribute the available assets to the holders of *modaraba* certificates within a period of three months or such extended period as may be allowed by the Registrar on an application of the liquidator from the date of expiry of the period fixed for the *modaraba* or the accomplishment of the purpose of the *modaraba*, as the case may be;”.

25. **Insertion of section 22A, Ordinance XXXI of 1980.**—In the said Ordinance, after section 22, amended as aforesaid, the following new section shall be inserted, namely:—

“22A. **Voluntary winding up of a *modaraba* by its certificate holders.**—A *modaraba* established or floated may be wound up voluntarily by the *modaraba* certificate holders in the same manner and subject to the provisions applicable on a member’s voluntary winding up of a company under the Companies Act.”.

26. **Amendment of section 23, Ordinance XXXI of 1980.**—In the said Ordinance, in section 23,—

(a) in sub-section (1), in clause (ii),—

(i) for sub-clause (b), the following shall be substituted, namely:—

“(b) the accumulated losses of the *modaraba* exceed fifty per cent of the *modaraba* fund; and

(ii) after sub-clause (b), substituted as aforesaid, the following new sub-clause shall be inserted, namely:—

“(ba) the *modaraba* has suffered net loss for three consecutive years;”; and

(b) for sub-sections (2) and (3), the following shall be substituted, namely:—

“(2) For the purpose of grounds provided in clause (ii) of sub-section (1), the Registrar may make an application to the Tribunal for winding up of a *modaraba* on receipt of the report of enquiry, inspection or investigation, as the case may be.

- (3) No application shall be made by the Registrar under this section unless it is in the best interest of the *modaraba* certificate holders and without giving the *modaraba* company an opportunity of being heard.”.

27. **Amendment of section 27, Ordinance XXXI of 1980.**—In the said Ordinance, in section 27,—

- (a) in sub-section (1), the words “in consultation with the Registrar” shall be omitted;
- (b) in sub-section (3), for the word “winding up” the words “liquidation” shall be substituted; and
- (c) in sub-section (5), for the figure “20” the figure “19” shall be substituted;

28. **Amendment of section 31, Ordinance XXXI of 1980.**—In the said Ordinance, in section 31,—

- (a) in sub-section (1),—
- (i) for the expression “section 4, 10” the expression “sections 4, 8,” shall be substituted; and
- (ii) for the words “five hundred thousand rupees” the words “one hundred million Rupees or with both” shall be substituted;
- (b) for sub-section (2), the following shall be substituted, namely:—

“(2) Where, the contravention referred to in sub-section (1) has caused loss to the *modaraba* certificate holders of the *modaraba* or any other person, a further fine to the extent of the loss shall be imposed and such fine shall be credited to the fund of the concerned *modaraba*:

Provided that all those persons including the chief executive, directors and officers convicted under this section shall not be entitled to benefit from the fine imposed and credited under this sub-section.”.

29. **Substitution of section 32, Ordinance XXXI of 1980.**—In the said Ordinance, for section 32, the following shall be substituted, namely:—

“32. **Penalties.**—(1) If any person—

- (a) refuses or fails to furnish any document, return or information which he is required to furnish by or under this Ordinance; or
- (b) refuses to comply with provisions of prospectus or conditions specified by the Registrar; or
- (c) obstructs or contravenes, or does not comply with, any order or direction of the Registrar or the Commission in the performance of his duties under this Ordinance; or
- (d) contravenes, or otherwise fails to comply with, any provision of this Ordinance or the rules or regulations,

the Registrar or the Commission, as the case may be, may if satisfied after giving the person an opportunity of being heard by order direct that—

- (i) in case of an individual, chairman, chief executive or director, pay such sum which may extend to one hundred million Rupees; and
  - (ii) in case of *modaraba* company, pay such sum which may extend to two hundred million Rupees and in case of a continuing default, a further sum calculated at a rate not exceeding one thousand Rupees for every day after the issue of such order during which the refusal, failure or contravention continues.”.
- (2) Any person aggrieved by an order of Registrar passed under sub-section (1) may, within thirty days of such order, prefer an appeal to the Commission.”.

30. **Substitution of section 33, Ordinance XXXI of 1980.**—In the said Ordinance, for section 33, the following shall be substituted, namely:—

- “33. **Liability of chairman, chief executive or a director of a company.**—Where the person guilty of an offence under this Ordinance is a company or body corporate, every director, manager or other officer or its chief executive responsible for conduct of its affairs shall, unless he proves that the offence was committed without his knowledge or that he exercised all diligence to prevent its commission, be deemed to be guilty of the offence.
- (2) Any sum directed to be paid under section 32 shall be recoverable under section 42B of the Act.



- (3) No prosecution for an offence against this Ordinance or the rules shall be instituted in respect of the same facts on which a penalty has been imposed under section 32.”.

31. **Amendment of section 36, Ordinance XXXI of 1980.**—In the said Ordinance, in section 36,—

- (a) in sub-section (1), for the words “any director or officer” the expression “, its chairman, chief executive or any of its directors or officers” shall be substituted; and
- (b) in sub-section (2), for the words “or its directors and officers” the expression “, its chairman, chief executive or any of its directors or officers” shall be substituted.

32. **Insertion of sections 36A and 36B, Ordinance XXXI of 1980.**—In the said Ordinance, after section 36, amended as aforesaid, the following new sections shall be inserted, namely:—

“PART-VI

MISCELLANEOUS

- 36A. **Restriction on merger or amalgamation of *modaraba*.**—Notwithstanding anything contained in the Companies Act, no *modaraba* shall be merged or amalgamated into another *modaraba* or any other entity and *vice versa* unless it has obtained no objection certificate from the Registrar in writing to such merger or amalgamation, before initiating any action for the purpose.
- 36B. **Destruction of documents.**—Any person who destroys, falsifies, conceals or disposes of or causes or permits the destruction, falsification, concealment or disposal of any document which he knows or ought to know is relevant to an enquiry under section 21 or any other document from record of the *modaraba* company or the *modaraba* shall commit an offence punishable with imprisonment of either description for a term which may extend to three years and with fine which may extend to fifty million Rupees.”.

33. **Amendment of section 37, Ordinance XXXI of 1980.**—In the said Ordinance, in section 37, for the expression “1979 (XXXI of 1979)”, the expression “2001 (XLIX of 2001)” shall be substituted.

34. **Amendment of section 39, Ordinance XXXI of 1980.**—In the said Ordinance, in section 39, after the word and comma “may,” the words “in consultation with the Commission and” shall be inserted.

35. **Insertion of sections 40A, 40B and 40C, Ordinance XXXI of 1980.**—In the said Ordinance, after section 40, the following new sections shall be inserted, namely:—

“40A. **Registration of mortgage, charge or pledge.**—(1) A *modaraba* company which creates mortgage, charge or pledge on the property or assets of *modaraba* or any of its undertakings or both must file with the Registrar for registration the specified particulars of such mortgage, charge or pledge, within thirty days from the date of creation, together with the instrument through which the mortgage, charge or pledge is created or evidenced in such form and manner as may be specified.

(2) All the provisions of the Companies Act relating to the creation, modification or satisfaction of mortgage, charge or pledge shall *mutatis mutandis* apply to the mortgage, charge or pledge created by a *modaraba*.

40B. **Fees.**—(1) There shall be paid in respect of the several matters mentioned in the First Schedule the several fees specified therein.

(2) All fees paid in pursuance of this Ordinance shall be accounted for to the Commission.

(3) Any document required or authorized by this Ordinance to be filed by a *modaraba* company with the Registrar shall not be deemed to have been so filed until the fee payable in respect thereof has been duly paid and either the original receipt or other proof acceptable to the Registrar has been furnished to it.”.

36. **Amendment of section 41, Ordinance XXXI of 1980.**—In the said Ordinance, in section 41, for sub-section (2), the following shall be substituted, namely:—

“(2) The power to make rules under this section shall be subject to the condition of previous publication and before making any rules, the draft thereof shall be published in the official Gazette and also be placed on the website of the Commission for eliciting public opinion thereon within the period of not less than thirty days starting from the date of its placement on the website.”.

37. **Amendment of section 41A, Ordinance XXXI of 1980.**—In the said Ordinance, in section 41,—

- (a) in sub-section (1),—
- (i) the expression “(1)”, occurring first, shall be omitted; and
- (ii) after the word “Commission”, occurring for the second time, the expression “, including placement of the draft thereof on its website,” shall be inserted; and
- (b) sub-section (2) shall be omitted.

38. **Insertion of section 41C, Ordinance XXXI of 1980.**—In the said Ordinance, after section 41B, the following new section shall be inserted, namely:—

“41C. **Power to amend schedules.**—The Commission may, by notification in the official Gazette, amend or add to any of the tables, regulations, requirements, forms and other provisions contained in any of the schedules and such alterations or additions shall have effect as if enacted in this Ordinance and shall come into force on the date of the notification, unless the notification otherwise directs.”.

39. **Insertion of Schedule, Ordinance XXXI of 1980.**—In the said Ordinance, after section 43, amended as aforesaid, the following Schedules shall be added, namely:—

**“THE FIRST SCHEDULE**  
[see section 2(1(k)), 6(1A), 8(3), 40B)]

**Scale of fees**

S. No.	Name of statues, rules, regulations, etc.	Nature and amount of fee
(1)	(2)	(3)
1.	Application for registration of <i>modaraba</i> company (non-refundable)	Rs. 100,000
2.	Application for authorization to establish <i>modaraba</i> (non-refundable fee)	0.25% of the nominal amount
3.	For filing, recording or registering any fact or document or fact required to be filed with, recorded by or registered with Registrar	Rs. 1,000 for each document

(1)	(2)	(3)
4.	For filing, registering and recording document relating to a mortgage or charge required under the Ordinance	Rs. 7,500
5.	For application for enquiry	Rs. 2,000
6.	For claim against <i>modaraba</i> company by <i>modaraba</i> certificate holders referred to the Tribunal	Rs. 2,000
7.	For any other application before the Tribunal other than an application by Registrar or before the Registrar by any person	Rs. 2,000
8.	For inspection of records	Rs. 200
9.	For certified copy of any document or extract thereof	At the rate of Rs. 20 per page or part thereof subject to a minimum of Rs. 100.

## THE SECOND SCHEDULE

[see section 18(1)]

## SHARE OF PROFIT OF MODARABA COMPANY

S. No.	Return on average equity	Share of profit (% of net profit)
(1)	(2)	(3)
1.	Up to 3%	15%
2.	Higher than 3% but up to 5%	18%
3.	Higher than 5%	20%

**Explanations.—**

1. “Return on average equity” means percentage of net profit to average equity before charging share of profit.
2. “Average equity” means the average of equity on the first day and the last day of the financial year of the *modaraba*.
3. In case the average equity of the *modaraba* is negative, the share of profit of the *modaraba* company shall not exceed 15% of net profit of the *modaraba*.”.

STATEMENT OF OBJECTS AND REASONS

SUBJECT:— **BILL TO FURTHER AMEND *MODARABA* COMPANIES AND *MODARABA* (FLOATATION AND CONTROL) ORDINANCE 1980.**

The proposed *Modaraba* Companies & *Modaraba* (Floatation and Control) Ordinance, (Amendment) Bill, 2020 intends to amend more than forty years old Ordinance and regulate the business of *Modarabas* and *Modaraba* Companies to provide protection to the investors, *modaraba* certificate holders and public. The existing *Modaraba* Companies and *Modaraba* (Floatation and Control) Ordinance, 1980 (XXXI of 1980) (“the Ordinance”) was promulgated by the Federal Government in 1980. Since its inception, no substantial changes have so far been introduced except inclusion of some administrative powers for the Commission and the Registrar *Modaraba* in the year 2012.

2. The Bill focuses on the growth of the *modaraba* sector through introduction of various reforms such as the concept of establishment of unlisted *modaraba*, empowerment of the certificate holders through introduction of the concept of annual general meeting to ensure maximum participation of certificate holders in decision making process of a *modaraba* and providing enabling environment for ease of doing business. It will facilitate the growth of economy in general and the Islamic financial sector in particular by providing simplified procedures for ease of starting and doing business, greater protection of investors and augment corporatization in the country.

3. The proposed Bill seeks to mitigate the reputational and operational risks and enhance the image and operational framework of *modarabas* as a pure Islamic financial institution of the country. The Bill aims to enhance SECP oversight and bring operational flexibilities for the *Modaraba* Sector.

4. In order to give immediate impetus to the Islamic financial industry and to stimulate economic growth, there is an emergent need to promulgate the proposed *Modaraba* Bill, 2020 to provide incentives to entrepreneur and prospective investors to invest and carry out their businesses under the umbrella of regulated structure of *modaraba* to earn halal profits on their investments.

5. The Bill is designed to achieve the aforesaid purpose.

DR. ABDUL HAFEEZ SHAIKH,  
*Advisor to PM on Finance & Revenue.*

TAHIR HUSSAIN,  
*Secretary.*