

A

Bill

to reform and re-enact the law relating to modaraba companies and modaraba and for matters connected therewith.

WHEREAS it is expedient to reform law regarding establishment, regulation and provide impetus to the growth of business of *modaraba*, protection and empowerment of modaraba certificate holders, investors and general public; provide framework for *Shariah* compliance and *Shariah* governance of the *modarabas*, and for the matters connected therewith or ancillary thereto.

It is hereby enacted as follows—

PART I

PRELIMINARY

1. Short title, extent and commencement.- (1) This Act shall be called the Modaraba Act, 2017.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. Definition.- In this Act, unless there is anything repugnant in the subject or context—

(i) “administrator” means an individual, company or a firm appointed by the Commission under this Act;

(ii) “administered legislation” shall have the same meaning as assigned to it in clause (aa) of sub-section (1) of section 2 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);

- (iii) “Commission” means the Securities and Exchange Commission of Pakistan established under section 3 of Securities and Exchange Commission of Pakistan, 1997 (XLII of 1997);
- (iv) “Companies Act” means the Companies Act, 2017 (of 2017);
- (v) “Court” shall have the same meaning as assigned to it in clause (23) of sub-section (1) of section 2 of the Companies Act;
- (vi) “document” shall have the same meaning as assigned to it in the clause (ja) of section 2 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);
- (vii) “financial statements” in relation to a *modaraba*, includes—
 - (a) a statement of financial position at the end of the period;
 - (b) a statement of profit or loss and other comprehensive income for the period;
 - (c) a statement of changes in equity for the period;
 - (d) a statement of cash flows for the period;
 - (e) notes, comprising a summary of significant accounting policies and other explanatory information;
 - (f) comparative information in respect of the preceding period;
 - (g) a report by the directors of modaraba management company about the state of affairs of a *modaraba*; and

- (h) any other statement as may be specified;

- (viii) “key executives” means the chief financial officer, company secretary and such other executives of the modaraba management company, as may be specified;

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

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

- (xi) “modaraba management company” means a company registered under section 6 or a *modaraba* company registered under Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980);

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

- (xiii) “prescribed” means prescribed by rules made by the Federal Government under this Act;

- (xiv) “promoter” means a person—
 - (a) who is named as a subscriber to the memorandum of association of a modaraba management company; or

- (b) who has control over the affairs of modaraba management company, directly or indirectly, whether as a shareholder, director or otherwise; or
- (c) in accordance with whose advice, directions or instructions the board of the modaraba management company is accustomed to act:

Provided that nothing in sub-clause (c) shall apply to—

- (i) a person who is acting merely in a professional capacity; and
 - (ii) the Commission or any authorized officer by virtue of enforcement or regulation of the provisions of this Act or any rules, regulations, instructions, directions, orders thereof;
- (xv) “prospectus” shall have the same meaning as assign to it in clause (xli) of section 2 of the Securities Act, 2015 (III of 2015);
 - (xvi) “regulations” means the regulations made by the Commission under this Act;
 - (xvii) “rules” means rules made by the Federal Government under this Act;
 - (xviii) “Schedule” means schedules appended to this Act;
 - (xix) “*Shariah* advisor” means *Shariah* advisor appointed under section 21;
 - (xx) “*Shariah* Board” means *Shariah* Board constituted under section 20; and

- (xxi) “specified” means specified through regulations made by the Commission under this Act.

PART II

REGISTRATION OF MODARABA MANAGEMENT COMPANY

3. Use of the word “*modaraba*” or any of its derivatives.- (1) No person or entity shall invite or collect deposit or raise funds from general public or employ any scheme by using the word “*modaraba* or *musharakah*”, modaraba management company or any other similar expression or kind or nature of wordings except as otherwise permitted under—

- (a) this Act;
- (b) the Banking Companies Ordinance, 1962 (LVII of 1962);
- (c) the Companies Act; or
- (d) any other entity permitted under any other law.

(2) Any contravention of sub-section (1) shall be an offence punishable with—

- (a) imprisonment of either description which may extend to seven years; and
- (b) fine, which may extend to one hundred million rupees, or where contravention resulted in substantial loss to other person or resulted in pecuniary gain to the person who committed the offence, to a fine which may extend to one hundred million rupees or twice the amount of loss caused or gain made whichever is higher,

and shall be cognizable by National Accountability Bureau (NAB) or Federal Investigation Agencies (FIA) or any other agency, as notified by the Federal Government as an investigation and prosecution agency:

Provided that the Commission may on receipt of any information refer the matter to any investigation and prosecution agency notified by the Federal Government.

4. No person to operate without registration.- (1) No person shall undertake or assist in undertaking a business of modaraba management company or establish, operate, assist in establishing or hold himself out as a modaraba management company, unless registered with the Commission under section 6.

(2) Any contravention of this section shall be an offence punishable under sub-section (2) of section 3.

5. Eligibility for registration.- (1) A company shall be eligible for registration as a modaraba management company with the Commission if it fulfills the following conditions, namely—

- (a) it is incorporated as a company under the Companies Act having the objects to function as a modaraba management company to establish, float and manage a *modaraba*, or is a body corporate formed under any law for the time being in force, owned or controlled, whether directly or through a company or corporation, by the Federal or Provincial Government;
- (b) it has a paid up capital of such amount as may be specified;
- (c) its promoters, chief executive, directors and the key executives shall fulfill such fit and proper criteria as may be specified;
- (d) any other condition as may be specified.

(2) All existing modaraba management companies shall fulfill the requirements as provided under clause (c) of sub-section (1) within a period of one year from the date of coming into force of this Act.

(3) For the purpose of incorporation as a company under the Companies Act, the promoters shall obtain no objection certificate from the Commission in the manner and subject to such fee as provided in the First Schedule.

(4) No objection certificate referred in sub-section (3) shall be valid for the period of six months or for such further period as may be extended by the Commission.

6. Application for registration.- (1) A company eligible for registration as a modaraba management company may make an application for registration to the Commission in such form and manner along with such documents as may be specified.

(2) The application under sub-section (1) shall be accompanied with such fee as provided in the First Schedule.

(3) The Commission may require an applicant to provide the Commission such further information as it considers necessary in relation to the application, in such form and manner and verified in such manner as the Commission may direct.

(4) The Commission, if satisfied after such enquiry and after obtaining such further information as it considers necessary and that it is in the public interest so to do, may grant registration to such company on such conditions as it may deem fit.

(5) In particular and without prejudice to the generality of the powers conferred by sub-section (4), such conditions may include—

- (a) business to be undertaken;
- (b) investments to be made;
- (c) information and returns to be furnished to the Commission;
- (d) restriction on transfer of shares by promoters and shareholders of a company;
- (e) restriction on raising funds, in any form, from the general public; and
- (f) any other condition as may be specified.

7. Bar on undertaking other business.- No modaraba management company shall carry out any business other than establishing, floatation and management of *modaraba* or any other business as may be allowed by the Commission:

Provided that the existing *modaraba* companies engaged in businesses other than floatation and management of a *modaraba* shall comply with the above requirement within three years of coming into force of this Act and shall amend the memorandum of association accordingly.

8. Fit and proper criteria.- The Commission shall have the power to specify the fit and proper criteria for promoters, chief executive, directors and the key executives of the *modaraba* management company.

9. Duties of directors of a modaraba management company.- (1) Every director of a *modaraba* management company shall act in good faith in order to promote the objects of the *modaraba* for the benefit of its certificate holders as a whole and in the best interest of the *modaraba*.

(2) The directors of a *modaraba* management company shall—

- (a) ensure that the funds of the *modaraba* are used in a prudent manner and exercise due care so as to ensure the recovery of its assets keeping in view the repayment capacity of the customer and client;
- (b) not provide any undue benefit to any person from the assets of the *modaraba*;
- (c) except as otherwise specified, not allow unsecured facility or a facility that is not backed by either adequate collateral or bank guarantee;
- (d) ensure that the funds of a *modaraba* are not used for a business for which it does not have the required expertise;
- (e) ensure recovery of its assets using all means and avenues permissible under the law and in an efficient manner and exhaust all available remedies till it attains finality.

10. Conditions applicable to modaraba management company.- (1) No modaraba management company—

- (a) shall, subject to proviso to section 7, engage in any business which is of the same nature and competes with the business carried on by a *modaraba* floated or managed by it;
- (b) or any of its directors, key executives, shareholders, officers or their relatives or the companies or firms in which the above persons are interested as directors, partners or shareholders shall obtain any facility, loan, advance or credit from the funds of the *modaraba* or on the security of the assets of the *modaraba*.

Explanation.- For the purposes of this sub-clause the expression “relative”, in relation to a director or officer, means the spouse, brother or sister or any of the lineal ascendants or descendants.

(2) Modaraba management company shall subscribe in each *modaraba* established or floated by it, such percentage of *modaraba* certificates as may be specified.

(3) The Commission may specify the minimum and maximum limits and holding period of *modaraba* certificates by a modaraba management company in a *modaraba* to be established, floated or managed by it.

(4) The *modaraba* certificates subscribed by the modaraba management company or its promoters at the time of floatation of the *modaraba* shall not be transferred except with the prior approval of the Commission.

11. Sharing of profit between the modaraba management company and the *modaraba* certificate holders.- (1) The share of profit of a modaraba management company in respect of a *modaraba*, established, floated and managed by it shall be of the amount or percentage of return on assets of such *modaraba* as provided in the Second Schedule.

Explanation.- For the purpose of this section, the term “return on assets means percentage of net profit to total assets”.

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

(3) Not less than ninety percent of the net profit available for appropriation after payment of share of profit to the modaraba management company and appropriation to the mandatory reserve permissible under the rules or regulations shall be distributed to the *modaraba* certificate holders, subject to such conditions as may be specified.

12. De-registration of modaraba management company.- The Commission may, upon receipt of any application from the modaraba management company, de-register a modaraba management company subject to such terms and conditions as may be specified.

PART III

ESTABLISHMENT, FLOATATION AND MANAGEMENT OF A MODARABA

13. Types of *modaraba*.- (1) A *modaraba* may be of two descriptions—

- (a) “multipurpose *modaraba*” that is to say a *modaraba* having more than one specific purpose or objective; and
- (b) “specific purpose *modaraba*” that is to say a *modaraba* having one specific purpose or objective.

(2) A *modaraba* may be either for a fixed period or for an indefinite period.

(3) The *modaraba* certificates shall be listed on the securities exchange:

Provided that a *modaraba* may function without its *modaraba* certificates being listed for a certain time period, subject to such terms and conditions as may be specified.

(4) The modaraba management company shall, at least three months prior to expiry of the period prescribed in sub-section (3), submit an application along with the prospectus and other documents as may be required, seeking approval of the Commission for floatation of the *modaraba*.

(5) The Commission after evaluating performance of the unlisted *modaraba* may allow floatation of *modaraba*.

(6) If a modaraba management company fails to get the *modaraba* certificates listed on the securities exchange within the specified period or such extended period as may be allowed by the Commission or the approval under sub-section (5) is not granted, the *modaraba* shall be liable to be wound up within three months after the expiry of the specified period.

14. Establishment, floatation and maintenance of *modaraba*.- (1) Subject to section 16, a modaraba management company registered under section 6 shall apply to the Commission for permission to establish or float a *modaraba*, within a period of six months from the date of its registration or within such period as may be extended by the Commission.

(2) An application for floatation of *modaraba* shall be accompanied by a prospectus as provided in the Third Schedule or as near thereto as circumstances admit.

(3) An application for establishment of an unlisted *modaraba* shall be accompanied by a statement in lieu of prospectus as specified in the Fourth Schedule.

(4) The application, prospectus or the statement in lieu of prospectus, as the case may be, and the documents filed therewith shall be authenticated by all the directors of the modaraba management company.

(5) In addition to the *modaraba* fund raised by the issue of *modaraba* certificates, a financial services *modaraba* may, with the approval of the Commission, issue *Shariah* compliant instruments for resource mobilization subject to such terms and conditions and limitations as may be specified.

Explanation.- For the purposes of this section the expression “financial services *modaraba*” means a *modaraba*, which has invested more than seventy percent of its assets in such businesses and modes as may be specified.

- (6) A person commits an offence, who-
- (a) makes a misleading, incorrect, untrue or deceptive statement in a prospectus; or
 - (b) omits information or a statement from a prospectus that this Act or any rules or regulations made under this Act, requires to be included in the prospectus.

(7) Any person who commits an offence under sub-section (6), shall be liable to imprisonment of either description for a term which may extend to three years or with fine not exceeding one hundred million rupees or with both unless he proves that either the statement was immaterial or that he had reasonable ground to believe and did up to the time of issue of prospectus, that the statement was true.

(8) Every issuer, director of issuer or any person who has signed the prospectus shall be liable to pay compensation to any person who acquires any *modaraba* certificates, in reliance upon the prospectus, to which the prospectus relates and suffers loss in respect of them as a result of any incorrect, untrue or misleading statement in the prospectus or the omission from it of any matter required to be included under this Act.

15. Business of *modaraba*.- (1) No *modaraba* shall undertake any business activity which is opposed to the injunctions of Islam and the Commission shall not permit the establishment and floatation 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 injunctions of Islam.

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

- (a) the business of the *modaraba* established, floated and managed by it is strictly in accordance with the injunctions of Islam and the prospectus approved by the *Shariah* Board;
- (b) the *Shariah* compliance and *Shariah* governance framework notified by the Commission is complied with by a modaraba management company and the *modaraba*;
- (c) the applicable model financing agreements are used in all the business transactions entered into by a *modaraba*; and
- (d) any other requirements as may be required by the Commission.

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

(3) Any contravention or default in complying with the requirement of this section or where any business or part of business carried on or any transaction made, by a *modaraba* is *ultra vires* of its prospectus it shall be an offence punishable with imprisonment of either description for a term which may extend to three years or with fine which may extend to fifty million rupees, or with both.

16. Authorization.- (1) A modaraba management company which seeks to establish or float a *modaraba* shall make an application to the Commission for authorization in such form and manner as may be specified.

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

(3) The Commission may, if satisfied that it is in the public interest so to do, grant a certificate of authorization to establish or float a *modaraba* on such conditions as it may deem fit or such other conditions as may be imposed from time to time, including but not limited to business to be undertaken, expenses relating to the management of the *modaraba*, preservation of assets and other matters relating to the mode of distribution of profits:

Provided that, before issuing the certificate of authorization, the Commission may require the modaraba management company to make such modifications, additions or omissions in the prospectus as the *Shariah* Board may deem fit.

17. Conditions applicable for issuance of modaraba certificates.- (1) A modaraba management company shall not allot and issue any modaraba certificates unless a prospectus approved by the Commission 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.

(2) All moneys received from the applicants for the allotment and issue of *modaraba* certificates shall be deposited and kept in a separate account in a scheduled bank as defined in the State Bank of Pakistan Act, 1956 (XXXIII of 1956), until they are refunded in accordance with the provisions of sub-section (3) or until it is certified by the Commission that *modaraba* certificates have been allotted and issued an amount not less than the minimum amount referred to in sub-section (1).

(3) If the subscription referred in sub-section (1) has not been received by the date specified in the prospectus, all moneys received from the applicants shall be refunded to them within fifteen days of the said date and the modaraba management company and the directors thereof shall be jointly and severally liable to repay the money which is not so refunded.

(4) The modaraba management company shall issue *modaraba* certificates within thirty days from the date of allotment.

(5) The modaraba management company shall maintain a register of holders of *modaraba* certificates in such form and in such manner as may be specified.

(6) A *modaraba* certificate shall be transferable in the manner provided for in the Companies Act.

(7) Any contravention or default in complying with the requirement of this section shall be 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.

18. Assets and liabilities of a *modaraba* to be separate and distinct.- (1) The assets and liabilities of each *modaraba* shall be separate and distinct from those of another *modaraba* and also from those of modaraba management company.

(2) No *modaraba* shall be liable for the liabilities, or be entitled to benefit from the assets, of any other *modaraba* or of the modaraba management company.

(3) A *modaraba* shall sue and be sued in its own name through the modaraba management company.

19. Increase in *modaraba* fund.- The directors of the modaraba management company may, subject to the permission of the Commission increase the *modaraba* fund by issue of further *modaraba* certificates in such manner and subject to such conditions as may be specified.

PART IV

SHARIAH BOARD AND SHARIAH ADVISOR

20. Shariah Board.- (1) The Commission shall, for the purposes of this Act or any administered legislation, constitute a *Shariah* Board which shall consist of such number of members, having such qualification, perform such functions, subject to such terms and conditions as may be specified.

(2) In addition to the duties and functions specified under this Act, the *Shariah* Board constituted under sub-section (1), shall also provide advice to the Commission on the *Shariah* matters pertaining to administered legislation and perform such other functions as may be assigned to it by the Commission from time to time.

21. Appointment of *Shariah* advisor.- (1) Subject to the provisions of this Act, a modaraba management company authorized under section 16 to establish or float a *modaraba* or managing a *modaraba*, shall appoint *Shariah* advisor for each *modaraba*, licenced by the Commission, who shall meet the fit and proper criteria as may be specified.

(2) The appointment of *Shariah* advisor shall be for such period and subject to such terms and conditions as may be specified.

22. *Shariah* advisor's report.- (1) The *Shariah* advisor appointed under section 21 shall prepare a report regarding *Shariah* compliance status of the affairs of *modaraba* for a financial year.

(2) The form and contents of the report referred in sub-section (1) shall be in such manner as may be specified.

(3) The *Shariah* advisor's report shall be circulated to the *modaraba* certificate holders in such form and manner as the Commission deems appropriate along with the annual audited accounts financial statements.

PART V

BOOKS OF ACCOUNTS, FINANCIAL STATEMENTS AND AUDIT

23. Maintenance of books of accounts of a *modaraba*.- The *modaraba* management company shall maintain the books of accounts, bank accounts and fund of each *modaraba* separate and distinct from those of another *modaraba* and also from those of the *modaraba* management company.

24. Preparation and circulation of annual financial statements and reports.- (1) Every *modaraba* management company, shall hold an annual general meeting of *modaraba* certificate holder of each *modaraba* managed by it within a period of four months following the close of its financial year and lay before the *modaraba* certificate holders its annual financial statements prepared in terms of the Fifth Schedule, audited by the auditor of the *modaraba*:

Provided that the Commission may for reasons to be recorded in writing extend the time, not exceeding thirty days, within which annual general meeting shall be held.

(2) Every *modaraba* management company shall comply with financial reporting standards or such other standards as may be notified by the Commission and prepare the financial statements of the *modaraba* in terms of the requirements of the Fifth Schedule and

disseminate the audited financial statements along with notice of general meeting in form and manner as may be specified, together with—

- (a) a report of the auditor on the financial statements;
- (b) a report by the *Shariah* advisor;
- (c) a report by the modaraba management company on the state of affairs, activities and business prospects of the *modaraba* and the amount of profits to be distributed to the *modaraba* certificate holders; and
- (d) the chairman's review report,

to every *modaraba* certificate holder of the *modaraba* and to every person who is entitled to receive notice of general meeting at least twenty-one days before the date of annual general meeting at which it is to be laid before the *modaraba* certificate holders of the *modaraba*, and shall also post the said statements and reports on its website and also keep a copy in physical form at the registered office of the modaraba management company for the inspection of the *modaraba* certificate holders.

(3) A copy of the said financial statements and reports shall be simultaneously filed with the Commission electronically or in such manner as may be specified.

(4) In addition to the documents referred to in sub-section (2), the modaraba management company shall furnish to the Commission and the *modaraba* certificate holders such other reports, statements and information as may be specified.

(5) Any contravention or default in complying with the requirement of this section shall be an offence punishable with imprisonment of either description for a term which may extend to two years and with fine which shall not be less than five hundred thousand rupees nor more than five million rupees and with further fine which may extend to ten thousand rupees for every day after the first day during which the default continues.

25. Financial statements and audit.- (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 in this Act.

(2) In addition to other matters, the auditors shall also state in his report whether in his opinion the business conducted, investments made and expenditure incurred by the *modaraba* are in accordance with the objects, terms and conditions of the *modaraba*.

(3) Notwithstanding anything contained in sub-sections (2), the Commission may require a modaraba management company to submit a separate statement duly certified by the auditor of the *modaraba* verifying the reasonability and authenticity of the expenses made for attaining the objects of the *modaraba*.

PART VI

INSPECTION, INVESTIGATION AND ENFORCEMENT

26. Power of the Commission to call for information.- The Commission shall have all the powers as provided in section 31A of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997) to require any person to furnish it any document or information under this Act and any contravention of this section shall be an offence punishable under sub-section (3) of section 31A of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997).

27. Inspection, inquiry and investigation.- (1) The Commission shall from time to time monitor the business activities of a modaraba management company and *modaraba* through on-site and off-site inspections and issue necessary directions in the interest of the *modaraba* and modaraba certificate holders.

(2) The provisions of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997) and the Companies Act, shall apply *mutatis mutandis* to all inspections, inquiry or investigations conducted under this Act.

(3) The investigating officer carrying out investigation, inquiry or inspection under this Act shall have all the powers of investigating officer as provided under the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997) and the Companies Act.

(4) Any contravention of this section shall be an offence punishable under sub-section (5) of section 28A, sub-section (3) of section 29 and section 30 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997).

PART VII

DISCIPLINARY PROCEEDINGS

28. Disciplinary action in respect of modaraba management company.- (1) Where the Commission is of the opinion that a modaraba management company—

- (a) is or was at any time, guilty of misconduct;
- (b) or its chief executive or any of its directors or any of its key executives are not a fit and proper person,

the Commission may exercise the following powers as it may consider appropriate in the circumstances of the case—

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

and the Commission may—

- (I) appoint an administrator or a modaraba management company to run and manage the affairs of the *modaraba* floated by it, if any; or
 - (II) appoint a new board of directors or require the modaraba management company to carry out such changes in the management and procedure as may be specified in the order.
- (2) In this section “misconduct” includes—
- (a) a contravention of any of the provisions of this Act or the rules or regulations made thereunder;
 - (b) a contravention of any of the terms or conditions of registration or authorization granted under this Act;
 - (c) failure to comply with any direction of the Commission;
 - (d) failure of a modaraba management company to establish or float a *modaraba* within six months from the date of its registration or any other period as may be specified;
 - (e) that modaraba management company has become defunct or has been wound up; or
 - (f) an act or omission by a modaraba management company in relation to its activity which, in the opinion of the Commission, is likely to be prejudicial to the public interest;
 - (g) that a modaraba management company has been conducting the affairs of a *modaraba* in a fraudulent or unlawful manner,

and the expression “guilty of misconduct” shall be construed accordingly.

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

Provided that where the Commission is satisfied that delay in the suspension of registration under clause (i) of sub-section (1), cause serious financial damage to *modaraba* certificate holders or is detrimental to the interest of investors or the public in general, the Commission may, after recording reasons in writing, immediately suspend its registration till the time an opportunity of hearing is provided to the modaraba management company and a final decision is taken within a period of not more than sixty days.

(4) The modaraba management company removed from the management of a *modaraba* under clause (ii) of sub-section (1), shall not be entitled to or be paid any compensation or damages for loss or termination of office.

(5) The Commission may specify the manner in which the modaraba management company shall be given an opportunity to be heard.

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

(7) The Commission may, for the purposes of this section, exercise any power as provided in PART IXA of Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997).

29. Removal of chairman, chief executive, directors and any of the key executives.- (1) Without prejudice to anything contained in any other provision of this Act, where the Commission is satisfied that—

- (a) continued association of a chairman, chief executive, director or any of the key executives of the modaraba management company, is or is likely to be detrimental to the interests of the *modaraba* or its certificate holders or persons whose interest is likely to be affected; or
- (b) the public interest so demands; or

- (c) to prevent the affairs of the *modaraba* being conducted in a manner detrimental to the interest of its certificate holders or in a manner prejudicial to the interests of the *modaraba*; or
- (d) to secure proper management of the *modaraba*,

and it is necessary so to do, the Commission may, for reasons to be recorded in writing, by order, remove from office, with effect from such date as may be specified in the order, any chairman or chief executive, director or any of the key executives of the modaraba management company.

(2) No order under sub-section (1) shall be made unless the chairman, chief executive, or director or the key executive of a modaraba management company has been given an opportunity of making a representation and of being heard:

Provided that where the Commission is satisfied that delay in taking action under sub-section (1) shall be detrimental to the interest of modaraba certificate holders, investors or the public in general, the Commission after recording reasons in writing immediately take action till the time an opportunity of hearing is provided and a final decision shall be taken within a period of not more than sixty days, and by order direct that—

- (a) the chairman or, director or chief executive or key executives shall not, with effect from the date of the order—
 - (i) act as chairman or director or chief executive or key executive of the modaraba management company; or
 - (ii) in any way, whether directly, or indirectly, be concerned with, or take part in the management of the *modaraba*;
- (b) any person authorized by the Commission in this behalf shall act as chairman or director or chief executive of the modaraba management company till another person is appointed in such manner, as may be directed by the Commission, to fill in the vacancy.

(3) Where any order under sub-section (1) is made in respect of a chairman, director, chief executive or a key executive of a modaraba management company, he shall cease to be a chairman, a director, chief executive or key executive of the modaraba management company and shall not in any way, whether directly or indirectly, be concerned with, or take part in, the management of the *modaraba* or any other *modaraba* for such period not exceeding three years as may be specified in the order.

(4) Any person appointed as chairman or director or chief executive under clause (b) of sub-section (2) shall—

- (a) hold office subject to such conditions and for such period not exceeding three years, as the Commission may specify in the order;
- (b) not incur any obligation or liability for anything which is done or intended to be done in his capacity as chairman or director or chief executive.

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

30. Change of modaraba management company on the application of modaraba certificate holders etc.- (1) Where an application is made by the *modaraba* certificate holders, holding such percentage of the total modaraba certificates as may be specified, -

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

the Commission may, after affording the modaraba management company an opportunity of being heard and after conducting such inquiry as the Commission deems fit, without prejudice to any other action that may be taken under the law, by order in writing—

- (i) change the modaraba management company of a *modaraba*; or

- (ii) require the modaraba management 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 management company for such period and on such terms and conditions as the Commission 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 management company.

(2) The administrator appointed under this section shall have all the powers to manage the property, moveable or immovable including bank accounts of the *modaraba*.

(3) For the purposes of this section all the financial institutions shall provide all assistance to the administrator or the modaraba management company appointed under this section including but not limited to access and control over the bank accounts of the *modaraba*, notwithstanding anything contained in any other law.

(4) The Commission shall, before taking any action under this section, ascertain eligibility of the applicants after examining merits and materiality of the application and it may require any other information or document, which in the opinion of the Commission is necessary for disposal of the matter and which establishes that the modaraba management company is not managing the affairs of the *modaraba* in accordance with this Act, rules or regulations or any direction issued thereunder or any condition of the *modaraba*, pass any order as it deem appropriate.

(5) The Commission shall not pass an order without providing an opportunity of being heard to the existing modaraba management company.

31. Voluntary change of modaraba management company.- If an application is made by the modaraba management company in a manner as may be specified, for change of management of modaraba management company, the Commission may by an order, appoint

another modaraba management company to manage the *modaraba*, subject to such terms and conditions as may be specified:

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

32. Conditions on minimum holding by a modaraba management company.- (1)

The outgoing modaraba management company in terms of sections 28, 30 or 31 shall not divest its *modaraba* certificates to the extent of minimum holding as required under this Act for such period as may be specified.

(2) The incoming modaraba management company appointed in terms of sections 28, 30 or 31 shall acquire minimum holding of modaraba certificates as required under this Act within such period and in such manner as may be specified in the order passed under any of the said sections.

PART VIII

WINDING UP OF MODARABA MANAGEMENT COMPANY AND *MODARABA*

33. Bar on winding up of a modaraba management company.- (1)

Notwithstanding anything contained in the Companies Act—

- (a) a modaraba management 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;
 - (ii) it has been deregistered as a modaraba management company in accordance with the provisions of this Act; and

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

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

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

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

(iii) any other ground that the Court deems fit in the facts and circumstances of the case.

(2) Nothing in this section shall apply to the winding up of a *modaraba* under section 34.

34. Circumstances in which *modaraba* may be wound up voluntarily.- (1) A *modaraba* floated for a fixed period or for a specific purpose shall be wound up by the modaraba management company itself on the expiry of the period fixed for the *modaraba* or the accomplishment of the purpose of the *modaraba*, as the case may be, provided the following conditions are fulfilled, namely—

(a) all the directors of the modaraba management company shall make a declaration verified by an affidavit to the effect that they have made a full enquiry about the affairs of the *modaraba* and, having done so, have formed the opinion that the *modaraba* will be able to discharge its claims and liabilities in full 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 Commission 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;

- (b) the declaration referred to in clause (a) shall be supported by a report of the auditor of the *modaraba* on the affairs of the *modaraba* and shall have no effect unless it is filed with and approved by the Commission within ninety days of 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.

(2) Any person aggrieved by the decision of the Commission under clause (b) of subsection (1) may prefer an appeal under section 49 within the period of thirty days from the date on which the decision is given.

35. Voluntary winding up of a *modaraba* by its certificate holders.- In addition to the grounds mentioned in section 36, a *modaraba* established or floated may be wound up voluntarily by the modaraba certificate holders in the same manner and subject to the provision applicable on a member's voluntary winding up of a company under the Companies Act.

36. Circumstances in which *modaraba* may be wound up by the Court.- (1) A *modaraba* may be wound up by the Court on an application made by the Commission if—

- (a) in the case of a *modaraba* for a fixed period on the expiry of that period or, in the case of a *modaraba* for a specific purpose on the accomplishment of its purpose, the declaration referred to in clause (b) has not been filed with the Commission within the period specified in section 34;
- (b) in the case of any *modaraba*, the Commission has declared that—
 - (i) the *modaraba* is unable to discharge its claims and liabilities; or
 - (ii) the accumulated losses of the *modaraba* exceed fifty per cent of the total amount subscribed by the holders of the modaraba certificates; or
 - (iii) the *modaraba* has suffered net loss for three consecutive years;

- (c) the business of the *modaraba* is being or has been, conducted for a fraudulent purpose or with intent to defraud the holders of the modaraba certificates, or its creditors or any other person;
- (d) the modaraba certificates of an unlisted *modaraba* are not listed on the securities exchange within the specified period;
- (e) the Court is of opinion that it is just and equitable that the *modaraba* should be wound up; or
- (f) any other ground mentioned in the Companies Act applicable for the winding up of a company by Court.

(2) For the purpose of grounds provided in clause (c) of sub-section (1) the Commission may make an application to the Court for winding up of a *modaraba* on receipt of the report of an inspection or investigation under section 27, as the case may be.

(3) No application shall be made by the Commission under this section without giving the modaraba management company, an opportunity of being heard.

37. Powers of Court on hearing application for winding up of *modaraba*.- (1) If, after hearing the application for winding up of a *modaraba*, the Court decides to wind up the same, it shall appoint a liquidator from the panel maintained by the Commission under the Companies Act and approve a general scheme of winding up.

(2) All the provisions of the Companies Act relating to liquidation of a company by Court shall apply *mutatis mutandis* to the liquidation of a *modaraba*.

PART IX

COGNIZANCE AND PROSECUTION OF OFFENCES

38. Cognizance of offences and prosecution.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), no court other than the court

of Sessions or any other court as may be notified by the Federal Government under section 37 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997) shall take cognizance of any offence punishable with imprisonment or imprisonment in addition to fine under this Act, subject to the complaint by an officer authorized in this behalf by the Commission.

(2) All prosecution of offences against any person under this Act shall be conducted in accordance with section 38 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997).

PART X

MISCELLANEOUS

39. Restriction on the merger or amalgamation of a *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 Commission in writing to such merger or amalgamation, before initiating any action for the purpose.

40. 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 inspection or an investigation under section 27, 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.

41. Resolution of disputes through mediation.- A *modaraba* management company or a *modaraba* or *modaraba* certificate holders or the holders of *Shariah* compliant instruments or creditors may by written consent, directly refer a dispute, claim or controversy arising between them or between the *modaraba* certificate holders or directors inter-se, for resolution, to any individuals enlisted on the mediation and conciliation panel maintained by the Commission.

42. Enforcement of provisions of this Act.- (1) If a *modaraba* management company makes default in complying with any provisions of this Act or a direction made or

given under this Act and fails to make good the default within thirty days of the service of a notice to the modaraba management company requiring it to do so, the Court may, on an application made to it by the Commission, make an order directing the modaraba management company, chairman, its chief executive or any of its directors or key executives thereof to make good the default within thirty days or such period as may be specified in the order.

(2) Nothing in this section shall be deemed to prejudice the operation of any provision of this Act providing for the imposition of penalties on the modaraba management company, its chairman, chief executive or any of its directors or key executives in respect of any such default as aforesaid.

43. Penalty to be imposed by the Commission.- Wherever a penalty is provided for any offence, contravention of, or default in complying with, any of the provisions of this Act, rules or regulations made under this Act, such penalty shall be imposed by the Commission after providing a reasonable opportunity of hearing.

44. Penalties.- Except as provided in sections 3, 14, 15, 17, 24, 38 and 40, any person who—

- (a) refuses to furnish any document, return, statement or information for the purpose of this Act; or
- (b) refuses to fulfill any requirement imposed under the provisions of this Act or provide any information or document, the contents of which, to his knowledge, are untrue, incorrect or misleading; or
- (c) refuses to comply with the provisions of prospectus or conditions specified by the Commission; or
- (d) obstruct or contravenes or does not comply with any order or direction of the Commission, including an employee of the Commission, or an authorized person or investigator, in the performance of his duties under this Act; or

- (e) contravenes or otherwise fails to comply with any provision of this Act or the rules or regulations,

shall be liable to pay by way of penalty—

- (i) in the case of an individual, chairman, chief executive, director or a key executive, such sum which may extend to one hundred million rupees; and
- (ii) in the case of modaraba management company, such sum which may extend to two hundred million rupees.

45. Application of fines or penalties.— (1) The Court, officer or Commission imposing any fine or penalty under this Act may direct that the whole or any part thereof shall be applied in or towards—

- (a) payment of costs of the proceedings;
- (b) rewarding the person on whose information the fine or penalty is recovered; and
- (c) payment to an aggrieved party of compensation for any loss caused by the offence.

(2) Any amount recovered as fine or penalty which is not applied as aforesaid shall be accounted for in accordance with section 40AA of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997).

46. False statement, falsification, forgery, fraud, deception.— Provisions of the Companies Act shall apply *mutatis mutandis* in relations to punishment of false statement, falsification, forgery, fraud and deception.

47. Liability of chairman, chief executive, director or a key executive.— Where the person guilty of an offence under this Act is a company or body corporate, every director, its chief executive and any of the key executives responsible for the 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.

48. Appeal.- Any person aggrieved by the final decision of the Commission may, within sixty days of the decision communicated to him, prefer an appeal to the Court under section 34 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997).

Explanation.- For the purposes of this section, “final decision of the Commission” means a decision of the Appellate Bench of the Commission under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997).

49. Suits regarding business transactions relating to *modaraba*.- A modaraba management company may file suits against any other party with whom it has entered into business transactions relating to *modaraba*, in the Banking Court established under the Financial Institutions (Recovery of Finances) Ordinance, 2001 (XLVI of 2001) and shall be proceeded with accordingly.

50. Indemnity.- (1) No suit, prosecutions, or any other legal proceedings or action in damages shall lie against the Federal Government or the Commission, which is done in good faith or intended to be done in good faith under this Act or any rules or regulations in exercise or performance of any functions, power or duty conferred or imposed by or under this Act or any rules or regulations made thereunder unless the act is proved to have been in bad faith.

(2) The Commission or the Commissioner or any other officer of the Commission, shall not be sued in their personal capacity for any *bona-fide* action taken in their official capacity and in case of any such suit, the Commission shall bear expenses of the proceeding till its final decision.

51. Registration of mortgage, charge or pledge.- (1) A modaraba management company which has created mortgage, charge or pledge on the property or assets of *modaraba* or any of its undertakings or both must deliver to the Commission 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 modification or satisfaction of mortgage, charge or pledge shall *mutatis-mutandis* apply to the mortgage, charge or pledge created by a *modaraba*.

52. Power to exempt, etc.- The Minister-in-Charge of the Federal Government may, by notification in the official Gazette, exempt any company or a body corporate formed under any law and owned or controlled by the Federal Government or a Provincial Government, whether directly or through a company or corporation set up by such Federal Government or Provincial Government from the requirements of sub-section (1) of section 10.

53. Power to make rules.- (1) Subject to sub-section (3), the Federal Government may, by notification in the official Gazette, make rules for carrying out the purpose of this Act.

(2) The power to make rules under this section shall be subject to the condition of prior 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 soliciting public opinion thereon within the period of not less than sixty days starting from the date of its placement on the website.

54. Power to make regulations.- (1) In addition to the powers conferred by any other section of this Act, the Commission may, subject to sub-section (3), make regulations for carrying out the purposes and provisions of this Act and for the due administration of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may include—

- (a) issue and allotment of *modaraba* certificates;
- (b) maintenance of *modaraba*'s accounts;
- (c) audit and auditor's certificate;
- (d) annual and periodical financial statements and reports;
- (e) formation of a subsidiary company by a *modaraba*;
- (f) alteration in the prospectus of a *modaraba*;

- (g) risk management framework;
- (h) change of registered office from one city to another and opening and closing of branch offices of *modaraba*;
- (i) issue of modaraba certificates other than right allotment;
- (j) issue of modaraba certificates at a discount;
- (k) any other matters as may be specified.

(3) Before any regulations are made or amended under this Act, the Commission shall publish a draft of the regulations in the official Gazette and place it on its website for eliciting public opinion on the draft regulations for a period of not less than thirty days starting from the date of its placement on the website.

(4) Every regulation made or amended by the Commission shall be published in the official Gazette and shall come into effect on such date as may be specified in the notification.

55. Power to issue directions.- (1) Notwithstanding anything contained in any other provision of this Act, where the Commission is satisfied that it is necessary and expedient so to do—

- (a) in the public interest; or
- (b) to prevent the affairs of any Modaraba from being conducted in a manner detrimental to the interest of holders of modaraba certificates; or
- (c) to secure the proper management of any modaraba generally;

the Commission may issue such directions to a modaraba management company, as the Commission may deem fit, to remove and rectify the irregularities and the modaraba management company and its management shall be bound to comply with such directions.

(2) The Commission may, on a representation made to it or on his own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or canceling any direction may impose such conditions as it thinks fit.

56. Power of the Commission to issue directives, codes, circulars, notifications etc.- The Commission shall have the powers to issue such directives, codes, guidelines, circulars or notifications etc. as are necessary to carry out the purposes of this Act and the rules and regulations made thereunder.

57. Fees.- (1) There shall be paid in respect of the several matters mentioned in the First Schedule the several fees therein, for the time being, specified fees as the Commission may direct.

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

(3) Any document required or authorized by this Act to be filed by a modaraba management company with the Commission 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 Commission has been furnished to it.

58. Delegation of Powers.- (1) The Commission may, by notification in the official Gazette, subject to such limitations, restrictions or conditions as it may deem fit to impose, delegate any of its powers or functions under this Act to one or more Commissioners or any officer of the Commission.

(2) A delegation under this section shall not prevent the concurrent performance or exercise by the Commission of the powers or functions so delegated.

59. Exemption from tax.- The income of a listed *modaraba* shall be exempt from tax under the Income Tax Ordinance, 2001 (XLIX of 2001), if not less than ninety percent of its profit in a year is distributed to the holders of the modaraba certificates.

60. Power to alter schedules.- The Commission may, by notification in the official Gazette, alter 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 Act and shall come into force on the date of the notification, unless the notification otherwise directs.

61. Act to override other laws.- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

62. Removal of difficulty.- If any difficulty arises in giving effect to any provision of this Act, the Minister-in-Charge of the Federal Government may, make such order as it may deem necessary for removing the difficulty.

63. Transitional provisions.- (1) Subject to sub-sections (2) and (3), a company that immediately, before the commencement of this Act, is registered as a modaraba company or has been authorized to float and manage a *modaraba* under the Modaraba Companies and Modaraba (Flotation and Control) Ordinance, 1980 (XXXI of 1980) shall be deemed to be registered as a modaraba management company and authorized to float and manage a *modaraba* under this Act.

(2) From the commencement of this Act, all rules and regulations made by the Federal Government or the Commission, as the case may be, under the Modaraba Companies and Modaraba (Flotation and Control) Ordinance, 1980 (XXXI of 1980) and which are in force immediately prior to the commencement of this Act, which have not been specifically amended or repealed by rules or regulations made under this Act, shall continue to be in force and have effect as if they have been made by the Federal Government or the Commission, as the case may be, under this Act.

(3) Any condition that has been attached to a modaraba company registered or authorization given under the Modaraba Companies and Modaraba (Flotation and Control) Ordinance, 1980 (XXXI of 1980), and that is in force immediately prior to the commencement of this Act, shall be treated as being attached to any registration or authorization which is regarded as subsisting by virtue of these transitional provisions.

(4) Anything done, actions taken, instruments made, proceedings initiated, instituted, processes or communications issued and powers conferred, assumed or exercised and authorization given under the Modaraba Companies and Modaraba (Flotation and Control)

Ordinance, 1980 (XXXI of 1980) shall, on the coming into operation of any provision of this Act, be deemed to have been validly done, made, taken, initiated, conferred, assumed, given and exercised.

(5) Every notification, order or directive, circular, code or guideline issued under the Modaraba Companies and Modaraba (Flotation and Control) Ordinance, 1980 (XXXI of 1980) which is in force on the coming into operation of any provision of this Act shall continue to be in force and have effect as if they have been issued under this Act.

64. Repeal and saving.- (1) The Modaraba Companies and Modaraba (Flotation and Control) Ordinance, 1980 (XXXI of 1980) shall, hereinafter called as repealed Ordinance, stand repealed from the date of coming into force of this Act:

Provided that repeal of repealed Ordinance shall not—

- (a) revive anything not in force at the time at which the repeal takes effect; or
- (b) affect the previous operation of the repealed Ordinance or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the said repealed Ordinance; or
- (d) affect any penalty imposed, forfeiture made or punishment awarded in respect of any offence committed under the repealed Ordinance;
- (e) affect any inspection, investigation, prosecution, legal proceeding or remedy in respect of any obligation, liability, penalty, forfeiture or punishment as aforesaid,

and any such inspection, investigation, prosecution, legal proceeding or remedy may be made, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed.

- (2) Notwithstanding the repeal of the repealed Ordinance—
- (a) every notification, order or exemption issued, made or granted under the repealed Ordinance shall have effect as if it had been issued, made or granted under the corresponding provision of this Act;
 - (b) any official appointed or anybody elected or constituted under repealed Ordinance shall continue and shall be deemed to have been appointed, elected or constituted, as the case may be, under the corresponding provision of this Act;
 - (c) any document referring to any provision of the repealed Ordinance shall be construed as referring, as far as may be, to this Act, or to the corresponding provision of this Act;
 - (d) mortgages recorded in any register or book maintained under the repealed Ordinance shall be deemed to have been recorded in the register or book maintained under the corresponding provision of this Act;
 - (e) any permission, certificate or document issued, made or granted under the repealed Ordinance shall be deemed to have been issued, made or granted under this Act and shall, unless cancelled, in pursuance of any provisions of this Act, continue to be in force until the date specified in the permission, certificate or document.

FIRST SCHEDULE

[See section 58]

Scale of Fees

1.	For registration of a modaraba management company (non-refundable fee):	
	(i) for application seeking no objection certificate under section 5	Rs.500,000/-
	(ii) for registration of a modaraba management company under section 6	Rs. 25,000/-
2.	Application for authorization to float a listed <i>modaraba</i> or establish an unlisted <i>modaraba</i> (non-refundable fee)	One percent of the amount of modaraba fund, subject to minimum fee of Rs.100,000/-
3.	For increase in the modaraba fund	One percent of the amount of additional modaraba fund to be raised
4.	Annual Fee payable in the month of January every year:	
	(i) Renewal of registration of modaraba management company	Rs.100,000/-
	(ii) Monitoring fee	0.5% of the Modaraba fund but not exceeding Rs.1,000,000/-
5.	For filing, registering and recording document relating to a mortgage or charge	Rs.7,500/-
6.	For filing, recording or registering any other document	Rs.1,000/- for each document
7.	For inspection of records maintained by the Commission	Rs.500/-
8.	(i) For a certified copy of registration certificate or authorization certificate or a certificate of registration of mortgage or charge or any other certificate issued under this Act	Rs.200/-
	(ii) For a certified copy of prospectus of a <i>modaraba</i>	Rs.500/-

	(iii) For a certified copy of financial statements of a <i>modaraba</i> or a modaraba management company	Rs.500/-
	(iv) For a certified copy of any return except the prospectus or the financial statements	Rs.300/-
	(v) For a certified copy or extract of any other document or register, calculated at the rate, per page or fractional part thereof required to be copied, subject to a minimum fee of one hundred rupees	Rs.20/-
9.	Application seeking approval for resource mobilization under section 14	0.5% of the amount for which permission to be granted
10.	Application from modaraba certificate holder(s) for change of modaraba management company of a <i>modaraba</i> or its chief executive or any of its directors or appointment of administrator under section 30	Rs. 10,000/-
11.	Application from modaraba management company for voluntary change of modaraba management company of a <i>modaraba</i> under section 31	Rs.1,000,000/-
12.	Application from modaraba management company seeking approval to wind up modaraba management company under section 33	Rs.50,000/-
13.	Application seeking no objection certificate for merger or amalgamation of a <i>modaraba</i> under section 39	Rs.250,000/-
14.	Application for relaxation of any of the requirements of rules or regulations framed under this Act	Rs.100,000/-
15.	For any other application	Rs.10,000/-

SECOND SCHEDULE

[See section 11]

SHARE OF PROFIT OF MODARABA MANAGEMENT COMPANY

<u>S#</u>	<u>Return on Assets</u>	<u>Share of profit (% of net profit)</u>
1	Up to 3%	10%
2	Higher than 3% but up to 5%	12%
3	Higher than 5% but up to 7%	15%
4	Higher than 7%	20%

THIRD SCHEDULE

[See section 14]

I - PROSPECTUS FOR A LISTED MODARABA

Matters to be specified in Prospectus and Reports to be set out therein

SECTION A

Format of the prospectus

1. Cover Page:

- (i) The following statement should appear on the upper most top in bold capital letters:-

“ADVICE FOR INVESTORS

INVESTORS ARE STRONGLY ADVISED IN THEIR OWN INTEREST TO CAREFULLY READ THE CONTENTS OF THIS PROSPECTUS, ESPECIALLY THE RISK FACTORS GIVEN AT PARA --- BEFORE MAKING ANY INVESTMENT DECISION.

SUBMISSION OF FICTITIOUS APPLICATIONS IS PROHIBITED AND SUCH APPLICATIONS’ MONEY MAY BE FORFEITED UNDER SECTION 87(8) OF THE SECURITIES ACT, 2015.”

- (ii) The following statement should appear in case of offer of modaraba certificates through book building after the statement mentioned at (i) above:-

“ADVICE FOR INSTITUTIONAL INVESTORS AND HIGH NET WORTH INDIVIDUAL INVESTORS

A SINGLE INVESTOR CANNOT SUBMIT MORE THAN ONE BIDDING APPLICATION EXCEPT IN THE CASE OF UPWARD REVISION OF BID. IF AN INVESTOR SUBMITS MORE THAN ONE BIDDING APPLICATION THEN ALL SUCH APPLICATIONS SHALL BE SUBJECT TO REJECTION.

SUBMISSION OF CONSOLIDATED BIDIS PROHIBITED UNDER THESE REGULATIONS. A BID APPLICATION WHICH IS BENEFICIALLY OWNED (FULLY OR PARTIALLY) BY PERSONS OTHER THAN THE ONE NAMED THEREIN SHALL BE DEEMED TO BE A CONSOLIDATED BID.

PLEASE NOTE THAT AN ADDENDUM TO THE PROSPECTUS SHALL BE PUBLISHED WITHIN THREE WORKING DAYS OF THE CLOSING OF THE BIDDING PERIOD WHICH SHALL CONTAIN INFORMATION RELATING TO THE STRIKE PRICE, THE OFFER PRICE, NAMES OF THE UNDERWRITERS OF THE RETAIL PORTION OF THE ISSUE IF ANY, UNDERWRITING COMMISSION, BIFURCATING AS TAKE UP COMMISSION OR ANY OTHER, COMMITMENT BY THE SUCCESSFUL BIDDERS FOR SUBSCRIBING THE UNDERSUBSCRIBED RETAIL PORTION IN CASE OF HUNDRED PERCENT BOOK BUILDING, CATEGORY WISE BREAKUP OF THE SUCCESSFUL BIDDERS ALONG WITH NUMBER OF

MODARABA CERTIFICATES ALLOCATED TO THEM, DATES OF PUBLIC SUBSCRIPTION AND SUCH OTHER INFORMATION AS SPECIFIED BY THE COMMISSION”

- (iii) Full name of the Issuer along with logo/monogram, if any.
- (iv) In case of offer for sale, full Name of the Offeror and the following statement:
“THIS IS NOT A PROSPECTUS BY [... NAME OF THE ISSUER ...] (THE “MODARABA”) BUT AN OFFER FOR SALE BY THE [... NAME OF THE OFFEROR ...] (THE “OFFEROR”) FOR OFFER FOR SALE OF MODARABA CERTIFICATES HELD IN THE MODARABA.”
- (v) Total issue size i.e. the number of securities to be offered with breakup of pre-IPO preferential allocation, if any; allocation to book building portion, in case of book building; allocation to retail investors; and allocation under the green shoe option, if any. In case of shelf registration, the total approved issue size, the size of the current tranche and the time period of shelf registration.
- (vi) The offer price, the Floor Price, in case of book building.
- (vii) In case of book building, dates for registration of the bidders; dates of bidding i.e. the bidding period along with timing.
- (viii) Date(s) of public subscription along with timing in bold letters.
- (ix) Name of the consultants to the issue, the book runner, in case of book building, the bankers to the issue; web link along with timing through which e-application for subscription of securities can be submitted; and names of the underwriters.
- (x) Contact details of at least two relevant persons of the Issuer, and consultants to the issue, well conversant with the issue who could be contacted by the investors, if needed.
- (xi) Website addresses from where the prospectus, application and bidding forms can be downloaded.
- (xii) Date of publication of the prospectus.
- (xiii) Additional information in case of issuance of debt securities:
 - (a) Entity and instrument rating,
 - (b) name of the rating agency;
 - (c) tenor;
 - (d) name of Shari’ah advisor/Shari’ah board (in case of issuance of Islamic debt security or such other securities which are claimed to be Shari’ah compliant); and
 - (e) rate of profit.

2. Inside Cover Page:

- (i) The following undertaking by the Issuer:
“WE.....THE CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER CERTIFY THAT;

- (1) **THE PROSPECTUS CONTAINS ALL INFORMATION WITH REGARD TO THE ISSUER AND THE ISSUE, WHICH IS MATERIAL IN THE CONTEXT OF THE ISSUE AND NOTHING HAS BEEN CONCEALED IN THIS RESPECT;**
- (2) **THE INFORMATION CONTAINED IN THE PROSPECTUS IS TRUE AND CORRECT TO THE BEST OF THEIR KNOWLEDGE AND BELIEF;**
- (3) **THE OPINIONS AND INTENTIONS EXPRESSED THEREIN ARE HONESTLY HELD;**
- (4) **THERE ARE NO OTHER FACTS, THE OMISSION OF WHICH MAKES THE PROSPECTUS AS A WHOLE OR ANY PART THEREOF MISLEADING; AND**
- (5) **ALL REQUIREMENTS OF THE MODARABA ACT, 2017, THE SECURITIES ACT, 2015; THE DISCLOSURES IN PUBLIC OFFERING REGULATIONS, 2016 FOR PREPARATION OF PROSPECTUS, RELATING TO APPROVAL AND DISCLOSURES HAVE BEEN FULFILLED.”**

For and on behalf of (... Name of the Issuer...and in case of an offer for sale ... name of the offeror...)

.....Sd-.....

.....Sd-.....

Name of the Chief Executive Officer

Name of the Chief Financial Officer”

- (ii) In case of book building, an addendum to the prospectus as per the following format.

“Addendum to the Prospectus”

This addendum is being published in continuation of the prospectus of ...(name of the Issuer)... earlier published on MM DD, YYYY.

Name of the Issuer...

- Floor Price
- Strike Price
- Issue Price

Underwriters to the retail portion of the issue if any

S. No.	Names of underwriter	Number of modaraba certificates underwritten	Amount (Rs. in million)
(i)			
(ii)			
Total			

Underwriting commission (in percentage):

Category-wise breakup of successful bidders

S. No.	Category	No. of bidders	Number of modaraba certificates provisionally allocated
	Institutional Investors:		
	Commercial banks		
	Development financial institutions		
	Mutual funds		
	Insurance companies		
	Investment banks		
	Employees' provident/pension funds		
	Leasing companies		
	<i>Modarabas</i>		
	Securities brokers		
	Foreign institutional investors		
	Any other		
	Institutional Investors		
	Individual investors:		
	Foreign investors:		
	Local		
	Individual Investors		

3. **Glossary of Technical Terms:** All the technical terms and abbreviations used in prospectus must be defined in the glossary.
4. **Index:** Index shall appear immediately after the glossary.
5. **Part I: Approvals, Consents and Listing on the securities exchange:**
 - (i) **Approval of the Commission:** Detail of approvals obtained from the Commission with respect to the issue. The detail must contain nature of approval, date of approval and relevant law.
 - (ii) The following disclaimer must be given:

“DISCLAIMER:

It must be distinctly understood that in giving this approval, SECP does not take any responsibility for the financial soundness of the *modaraba* and any of its schemes stated herein or for the correctness of any of the statements

made or opinions expressed with regards to them by the *modaraba* in this Prospectus.

SECP has not evaluated quality of the issue and its approval for issue, circulation and publication of the Prospectus should not be construed as any commitment of the same. The public/investors should conduct their own independent due diligence and analysis regarding the quality of the issue before subscribing.”

- (iii) **Approval of the securities exchange:** Detail of approvals obtained from the securities exchange with respect to the issue. The detail must contain nature of approval, date of approval and relevant law.
- (iv) The following disclaimer must be given:
“DISCLAIMER:
 - (a) **The securities exchange has not evaluated the quality of the issue and its clearance should not be construed as any commitment of the same. The public/investors should conduct their own independent investigation and analysis regarding the quality of the issue before subscribing.**
 - (b) **The publication of this document does not represent solicitation by the securities exchange.**
 - (c) **The contents of this document does not constitute an invitation to invest in shares or subscribe for any securities or other financial instrument by the securities exchange, nor should it or any part of it form the basis of, or be relied upon in any connection with any contract or commitment whatsoever of the exchange.**
 - (d) **It is clarified that information in this Prospectus should not be construed as advice on any particular matter by the securities exchange and must not be treated as a substitute for specific advice.**
 - (e) **The securities exchange disclaims any liability whatsoever for any loss however arising from or in reliance upon this document to any one, arising from any reason, including, but not limited to, inaccuracies, incompleteness and/or mistakes, for decisions and/or actions taken, based on this document.**
 - (f) **The securities exchange neither takes responsibility for the correctness of contents of this document nor the ability of the *modaraba* to fulfill its obligations there under.**
 - (g) **Advice from a suitably qualified professional should always be sought by investors in relation to any particular investment.”**
- (v) Statement on filing of the Prospectus and other documents like experts’ reports and contracts mentioned in the Prospectus, with the Commission.
- (vi) Statement about making of application to the securities exchange for listing of the Issuer, in case of unlisted entity.

6. Part II-A: Valuation Section

Justifications given by the Consultant to the Issue in support of the Offer/ Floor Price set by the Issuer, by taking into account various aspects including eligibility requirements and suitability of the Issuer or security for listing considering the interest of general public and its benefits to the capital market.

Explanation: The term suitability with regard to listing includes assessing various risks involved such as sector risk, operational risk, legal risk, etc., track record of sponsors, quality and capability of the management, past financial performance of the Issuer, future strategies of the Issuer, dividend payout history, financial projections, financial viability, dividend policy, etc.

7. Part II-B: Book Building Procedure

- (i) In case of issue through book building, information needed to be disclosed of the issue i.e. allocation of proposed modaraba fund under the book building portion and retail portion and the Floor Price.
- (ii) Types of bids and procedure for making a bid.
- (iii) Mechanism for determination of the strike price.
- (iv) Time frame for intimation to the successful bidders. Mechanism for payment of the balance amount by the successful bidders.
- (v) Name of the book runner, sub-book runner, if any, and its roles and responsibilities. Address, telephone number, cell number and fax number of the bid collection centers.
- (vi) Name of the designated institution and its roles and responsibilities.
- (vii) Role and responsibilities of the Issuer.
- (viii) Opening and closing of the bidding period.
- (ix) Eligibility to participate in bidding.
- (x) Information about availability of the prospectus, the registration form, and the bidding form.
- (xi) Procedure for registration.
- (xii) Procedure for bidding.
- (xiii) Title and number of the bank account for book building portion of the issue. Mechanism for payment of the margin money into the book building account.
- (xiv) Procedure for payment of the margin money by the foreign investors.
- (xv) Procedure for rejection of bids.
- (xvi) Time frame for upward revision of bids by the bidder.
- (xvii) Procedure for withdrawal of issue.
- (xviii) Mechanism for determination of strike price.
- (xix) Basis of allotment of modaraba certificates.

- (a) In case the bids received are sufficient to allot the total number of modaraba certificates offered for sale under the Book Building Portion, the allotment shall be made on the basis of highest bid priority that is the bid made at the highest price shall be considered first for allotment of modaraba certificates.
- (b) In case all the bids made above the Strike Price are accommodated and modaraba certificates are still available for allotment, such available modaraba certificates will be allotted against the bids made at the Strike Price strictly on time priority basis.
- (xx) Mechanism and mode for refunding/unblocking of the margin money.
- (xxi) Procedure and time frame for publication of the supplement to the prospectus.
- (xxii) Procedure for allotment of modaraba certificates in case of 100% book building and allotment of unsubscribed retail portion to the bidders.

8. Part II-C: Modaraba fund and Related Matters

- (i) Modaraba fund in tabular form (both existing and post IPO) along with necessary notes relating to the issued and allocated modaraba certificates, if any.
- (ii) **Present issue** - size of the issue with detailed break-up of allocation to Pre-IPO investors including their names, employees, non-resident Pakistanis etc., if any and general public.
- (iii) Opening and closing of subscription list.
- (iv) Investor eligibility.
- (v) Facilities available to local, Non-Resident Pakistanis and Foreign Investors.
- (vi) Minimum amount of application and basis for allotment of modaraba certificates.
- (vii) Refund/Unblocking of subscription money to unsuccessful applicants.
- (viii) Issue, dispatch and credit of modaraba certificates.
- (ix) Transfer of modaraba certificates.
- (x) Break up of modaraba certificates issued during preceding years.
- (xi) Purpose of the issue and utilization of the proceeds thereof.
- (xii) Interest of directors.
- (xiii) **Dividend policy:** The Issuer shall clearly mention its existing dividend policy, past 3 years dividend track record and future dividend policy. The Issuer shall clearly state the factors on which future dividend payments would depend. These factors may include earnings, modaraba fund requirements, contractual obligations including restrictive covenants under financing agreements the Issuer may enter into to finance the fund requirements for its business activities, applicable legal restrictions and overall financial position and projections of the Issuer.
- (xiv) Eligibility for dividend.

- (xv) Deduction of Zakat.
- (xvi) Exemption of income of the *modaraba* from income tax.
- (xvii) Taxations, like applicability of capital gain tax, withholding tax on dividends, tax on bonus modaraba certificates, federal excise duty and capital value tax & withholding tax on sale/purchase of modaraba certificates.
- (xviii) Tax on income of the Issuer, sales tax.
- (xix) Deferred taxation.
- (xx) Tax credit for enlistment, tax credit for investment in IPOs.

9. Part II-D : In case of issue of *Islamic debt securities*: In case of issue of debt securities, the following shall be disclosed, *inter-alia*,-

- (i) Structure of the issue, i.e. issue size with breakup of pre-IPO placement, if any, preferential allocation, if any, and allocation to the general public.
- (ii) Salient features of the issue including its tenor, expected rate of return, denomination of the certificate, market lot, secured/unsecured, credit rating details, purpose of the issue and utilization the proceeds thereof; brief security arrangement with reference to main part on security, in case of secured, restrictions and covenants, if any; opening and closing of the subscription list; investors eligibility; facilities available to investors local, foreign and NRPs, minimum application amount and basis of allotment; minimum amount that must be raised; refund/unblocking of subscription money of the unsuccessful applications; issue, credit and dispatch of securities; procedure for transfer of securities.
- (iii) Details of outstanding Islamic debt securities issued during preceding years along with date of issue, issue size, amount redeemed, amount outstanding; amount of profit paid; tenor; and credit rating.
- (iv) Redemption schedule; redemption reserve, if any.
- (v) Interest of the existing holders of the security being issued; nature of the security whether registered;
- (vi) Options like conversion option-
- (vii) Market making and liquidity.
- (viii) Deduction of Zakat.
- (ix) Taxations, like applicability of tax on income from investment in the security; withholding tax, capital gain tax, stamp duty, capital value tax etc.
- (x) Deferred Taxation.
- (xi) Structure of the instrument, Shari'ah principle based on which the instrument is structured; name and profile of the Shari'ah advisor; Shari'ah Certificate by the Shari'ah advisor.

10. Part III: Underwriting, Commissions, Brokerage and other expenses:

- (i) Underwriting; name of the underwriters and amount underwritten by each of them.
- (ii) Opinion of the directors regarding resources of the underwriters
- (iii) Rate of the underwriting commission.
- (iv) Statement about non-execution of any buy-back, or repurchase agreement between the underwriters or their associates and the Issuer or its associates.
- (v) Rate of commission to the banker to the issue.
- (vi) Rate of the brokerage commission.
- (vii) Breakup of the expenses of the issue including fee/amount payable to (a) consultant to the issue; the book runners; the ballotters and registrar to the issue; the underwriters; the bankers to the issue; listing fee; SECP fee; printing and publication cost etc.

11. Part IV: General Information: Overview, History and Prospects of the *modaraba*:

- (i) Name of *modaraba*.
- (ii) Type of *modaraba* i.e.:
 - (a) Multipurpose *modaraba* or Specified Purpose *modaraba*.
 - (b) *Modaraba* for a definite time or *modaraba* for an indefinite time.
- (iii) Authorization number, date of authorization, date of commencement of business.
- (iv) Description of the business including core and others, if any and its prospects.
- (v) Background and history of the *modaraba*.
- (vi) The form of *modaraba* certificate.
- (vii) Pattern of certificate holding of the *modaraba*.
- (viii) Explain the revenue and cost driver of the *modaraba* in detail.
- (ix) Organizational structure of the *modaraba*; group information, if any.
- (x) Associates of the *modaraba* along with business transactions.
- (xi) Nature and location of the *modaraba*'s projects, if any; current implementation and operational status of the projects; nature and type the plant and machinery; total capacity and capacity utilization; financial plan with detailed breakup, in case the proceeds of the issue are to be used for financing a project.
- (xii) Implementation schedule of the project like land acquisition, execution of civil works, installation of plant and machinery, date of trial production, date of commercial production.
- (xiii) Infrastructure facilities like roads, buildings, housing colonies; utilities like water, electricity; raw materials.

- (xiv) End users, demand for the products, names of the competitors.
- (xv) Future prospects, demand outlook.
- (xvi) Vendors to the issuer.
- (xvii) Industry overview and sector analysis.
- (xviii) **Risk Factors:** All possible risk factor relating to the business of the *modaraba*, the project, technology, competition, suppliers, consumers, industry, liquidity, regulatory, changes in Government policies, law and order situation, capital market, pending litigations, defaults etc.
- (xix) A statement that to the best of our knowledge and belief all risk factors have been disclosed shall be given immediately after the risk factors.

12. Part V: (a)Financial Information:

- (i) Auditor's report as certificate on issuedmodaraba fund.
- (ii) Auditor's certificate on break-up value per certificate, free float before and after Issue.
- (iii) In case of subsidiaries auditors certificates based on consolidated accounts of the issuing *modaraba*.
- (iv) Latest management/un-audited accounts of the *modaraba*, if any.
- (v) Summary of financial highlights of the Issuer along with key financial ratios for the last 3 years.
- (vi) Comparative financial analysis with peer group companies.

13. Part VI: Credit Rating (in case of Islamic debt securities):

- (i) Credit rating report in summarized/press release form.
- (ii) Complete credit rating report showing instrument or entity rating, whichever is applicable;
- (iii) Credit rating of the Issuer for the last five years, if undertaken, along with name of the respective rating agency;

14. Part VII: Trustee and Security (in case of Islamic debt securities):

- (i) Details of security and assets backing the instrument including nature of assets, book value of the assets as per the latest audited accounts; nature of charge established in favour of the Trustee, number and nature of charges on the said assets; names of the creditors having charge on these assets; and aggregate amount and type of such borrowing;
- (ii) Name of the Trustee, amount or rate of fee payable to the trustee;
- (iii) Event of defaults as mentioned in the Trust Deed;
- (iv) Circumstance under which security becomes enforceable;
- (v) Mechanism for enforcement of security including authority by way of special resolution by the security holders; quorum of the meeting; authority for approval

of resolution etc.

15. Part VIII: Information about the modaraba management company and group companies, etc.

- (i) Composition of the board of directors of the modaraba management company along with their names, executive or non-executive director, independent director or otherwise, addresses, CNIC number, brief profile, qualification and directorship in other companies.
- (ii) Dividend payout by group's listed companies in which the directors are holding directorship.
- (iii) Profile of the senior management including chief executive officer, chief financial officer, chief operating officer and company secretary.
- (iv) Dates of appointment and election of directors and chief executive.
- (v) Interest of the directors and promoters along with number and value of shares held by each of them, if any.
- (vi) Interest of the director and promoter in property/assets and expected profit of the company.
- (vii) Benefits (monetary or otherwise) provided to promoters and officers during last three years.
- (viii) Voting rights of promoters.
- (ix) Restriction, if any, on promoters of the company.
- (x) Composition of the audit committee and its role and responsibilities.
- (xi) Powers of the directors including any borrowing power.
- (xii) Indemnity available to the board of directors and other employees of the modaraba management company.
- (xiii) Performance for the last three years, of other associated listed companies along with following information:
 - (a) Name of the company;
 - (b) Date of incorporation;
 - (c) Registration number;
 - (d) Amount of issue;
 - (e) Date of public offer; date of listing and name of the securities exchange where the company is listed;
 - (f) Date of public offer and date of listing of any security other than ordinary shares;
 - (g) Date of completion of project, where purpose of the issue was financing of a project;
 - (h) Paid-up-capital; equity; total assets; total liabilities; profit before and after tax; rate of cash dividends paid; break-up value per share; earning per share, return on equity and return on assets.
- (xiv) Subsidiary companies and investment therein, if any.
- (xv) Associated companies and investment therein, if any.

16. Part IX: Miscellaneous Information

- (i) Address of the registered office of the modaraba management company (complete address, telephone & fax numbers and e-mail address)
- (ii) Names of bankers to the *modaraba*
- (iii) Name and address of the *modaraba*'s auditors
- (iv) Name and address of the legal advisors to the *modaraba*
- (v) Name and address of legal advisor to the issue
- (vi) Name and address of the balloters and share registrar
- (vii) Name and address of Consultant to the Issue
- (viii) Detail of material contracts referred to in the prospectus like underwriting agreements, due diligence reports by the underwriters and consultant to the issue, private placement agreements, project related agreements etc.
- (ix) Title and date of document/contract, parties to the contract, amount involved, if any, etc.
- (x) Inspection of Documents & Contracts by securities exchange
- (xi) Place and timing where documents relating to the Issuer and the issue can be inspected. The documents to be made available there must include copies of all those agreements, contracts, reports etc. referred to in the prospectus. The timing of inspection must be the usual business hours on working days at the registered office of the modaraba management company from the date of publication of the prospectus until the closing of subscription list.
- (xii) Pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the modaraba management company, *modaraba* or any of their subsidiaries is a party.
- (xiii) Detail of valuation, if any, of assets and capitalization of reserves.

17. Part X: Application & Allotment Instructions

- (i) Instructions for submitting application.
- (ii) Minimum amount of application and basis of allotment.
- (iii) List of bankers to the issue and their respective codes.
- (iv) Code of occupation of investors/applicants.
- (v) Nationality Code.

18. Part XI: Signatories to the Prospectus

- (i) List of the signatories to the prospectus and their signatures in original duly dated and witnessed.
- (ii) The prospectus should be signed by every person who is named therein as a director or proposed director of the modaraba management company.

19. Part XII: Memorandum of Association

Memorandum of Association of the modaraba management company.

20. Application Form

The application form both front and back containing instructions and other information

21. Bidding Form

The bidding form both front and back containing bidding procedure, strike price determination mechanism and basis of allotment.

SECTION B

**ADDITIONAL REQUIREMENTS IN CASE OF CONVERSION OF
AN UNLISTED *MODARABA* INTO A LISTED *MODARABA***

1. The number and amount of certificates which within the 3 preceding years have been issued, as fully paid up otherwise than in cash along with the following information:
 - (a) The nature, title and location of the property/assets against which modaraba certificates were issued.
 - (b) The valuation of the property carried out by a registered valuer.
 - (c) The value and amount of the property against which modaraba certificates were issued.
 - (d) short particulars of any transaction relating to the property completed within the two preceding years in which any person who is, or was at the time of the transaction, a promoter or a director or proposed director of the modaraba management company had any interest direct or indirect.

SECTION C

REPORTS TO BE SET OUT IN THE PROSPECTUS

1. A report made by auditors (who shall be named in the prospectus) for each of the three financial years immediately preceding the issue of the prospectus with respect to the following:
 - (a) profits and losses and assets and liabilities, in accordance with the clause (2) or (3), as the case may require; and
 - (b) the details of dividend (date, rate) paid by *modaraba* during last three financial years immediately preceding the issue of prospectus of the *modaraba*. If no accounts have been made up in respect of any part of the period of three years

ending on a date three months before the issue of the prospectus, containing a statement of that fact.

2. If the *modaraba* has no subsidiaries, the report shall so far as regards profits and losses, assets and liabilities for each of the ~~five~~ three financial years immediately preceding the issue of the prospectus;
3. If the *modaraba* has subsidiaries, the report shall so far as regards profits and losses, assets and liabilities of the *modaraba* as a whole with combined profits and losses of its subsidiaries, and individually with profit and losses of each subsidiary concern;
4. If any *modaraba* certificates have been or are to be issued or the proceeds, or any part of the proceeds, of the issue of the securities are or is to be applied directly or indirectly for the purchase of any business and by reason of that purchase entitled to an interest, as respects either the capital or profits and losses or both, in such business exceeding fifty percent thereof, a report made by auditors (who shall be named in the prospectus) upon profit and losses and assets and liabilities of the business;
5. If the proceeds, or any part of the proceeds of the issue of the *modaraba* certificates or *Islamic* debt securities are or is to be applied directly or indirectly in any manner resulting in the acquisition by the *Modaraba* of shares or *modaraba* certificates in any other body corporate and by reason of that acquisition or anything to be done in consequence thereof or in connection therewith, that body corporate will become a subsidiary of the *modaraba*, a report made by auditors (who shall be named in the prospectus) upon the profits or losses, the assets and liabilities of the other body corporate for each of the five financial years immediately preceding the issue of the prospectus;
6. The said report shall indicate how the business acquired is in the best interest of *modaraba* certificate holders of the issuer. Where the business being acquired has subsidiaries, how such subsidiaries are in the best interest of *modaraba* certificate holders;
7. In case of *Islamic* debt security, summary of the credit rating report by the credit rating agency, report by the *modaraba*'s auditors on security backing the issue and report by the *Islamic* debt security trustee that the security (if any) arranged and the mechanism for its enforcement, if needed, is appropriate for safeguarding interest of the security holders;
8. Statement on accuracy of the contents of the prospectus; and
9. The chief executive and chief financial officer of the *modaraba* management company and the *modaraba* respectively shall certify that the prospectus constitutes a full, true and plain disclosure of all material facts relating to the securities offered by the prospectus.

SECTION D

MATTERS TO BE SPECIFIED IN THE ABRIDGED PROSPECTUS AND REPORTS TO BE SET OUT THEREIN

1. The matters to be specified in the abridged prospectus and the reports to be given therein must be the same as provided in the full prospectus but, subject to provisions of this Schedule, in condensed or briefed form. The abridged prospectus must not contain any such information, material or report that is not contained in or part of the full prospectus.
2. The word, abridged must appear as a prefix to the word prospectus throughout the document.
3. Website addresses from where the complete prospectus along with experts reports, securities subscription application form and/or bidding form can be downloaded.
4. Addresses from where copies of the prospectus along with experts report can be obtained in physical form along with time and dates for collection.
5. Advices for investors, relating to reading of risk factors; prohibition of making false and fictitious application; consolidated and multiple bids etc.
6. The following information relating to the Issuer and the issue:
 - (i) name of the Issuer; proposed modaraba fund, if any; history and back ground, date of authorization, nature of the principle business, components of operations, three years financial summary and group structure;
 - (ii) name of the issuer, type of security; size of the issue including pre-IPO placement, if any, and offer price; dates for public subscription; minimum amount of application and basis of allotment; refund/unblocking of subscription money; transfer, issue, dispatch and credit of securities;
 - (iii) in case of book building, minimum bid value; date and time for registration of the prospective bidders; bidding period; date and time for revision of bids; rejection of bids;
 - (iv) Valuation Section as appearing in the prospectus
 - (v) in case of Islamic debt security additional information like tenor; expected rate of return/profit; redemption schedule; conversion options, if any; redemption reserve, if any; name and contact detail of the Islamic debt securities trustee and the credit rating company;
 - (vi) in case of issue of Sukuk, additional information like name of the Shari'ah Advisor, brief on the transaction structure, Shari'ah pronouncement by the Shari'ah Advisors, etc.; and
 - (vii) principal purposes of the issue.
7. Detail of approvals obtained including date of approval, name of the approving authority, relevant law and clause under which approval has been granted; disclaimer, if any, by the approving authority and name of the securities exchange where the security will be listed;

9. Names of the underwriter(s) and amount underwritten by each of them;
10. Address and other contact detail of the Consultant to the issue, the book runner and bid collection centres, all the bankers to the issue, the ballotters and transfer agents, the auditors of the Issuer, legal advisor to the issue, the debt securities trustee, the credit rating agency, Shari'ah advisors, market maker, if any.
11. The abridged prospectus must be signed and witnessed in such form and manner as the full prospectus; and
12. A statement by the Consultant to the Issue that the abridged prospectus contains a fair summary of the key information set out in the prospectus.

SECTION E

CONTENTS OF THE ADVERTISEMENT FOR PUBLIC OFFER OF SECURITIES

1. The matters to be specified in an advertisement to be published, telecasted or broadcasted, subsequent to publication of prospectus in full or in abridged form must contain only such material or information that is contained in or part of the prospectus.
2. Advices for investors, relating to reading of risk factors; prohibition of making fictitious application; consolidated and multiple bids; seeking professional advice before making investment decision etc. must be given.
3. The following information relating to the Issuer and the issue shall be disclosed in the advertisement:
 - (i) Name of Issuer, number of securities to be offered; offer price; bankers to the issue; consultant to the issue, and contact detail of the person who can be contacted by the investors for information about the issue;
 - (ii) Website addresses from where the complete prospectus along with experts reports, securities subscription application form and/or bidding form can be downloaded;
 - (iii) Addresses from where copies of the prospectus along with experts report can be obtained in physical form along with time and dates for collection;
 - (iv) In case of book building, the following additional information shall be disclosed:
 - (a) bidding period; floor price; and
 - (b) name of the book runner; address and contact detail of the bid collection centers.
 - (v) In case of Islamic debt security, the following additional information shall be disclosed:
 - (a) Entity and instrument rating, expected rate of return; tenor; and
 - (b) Names of the rating agency, the Islamic debt security trustee and the Shari'ah advisors.

4. Any other information or material that the Commission deems necessary in the public interest to be disclosed.
5. It is the responsibility of Issuers to ensure that the advertisements comply with all other relevant laws and Regulations.
6. The advertisements should be published at least in all those newspapers in which the prospectus or the abridged version of prospectus has been published.

SECTION F

MATTERS TO BE SPECIFIED IN THE SUPPLEMENT TO THE PROSPECTUS AND REPORTS TO BE SET OUT THEREIN

- (1) Supplement to the prospectus shall be published in all those newspapers in which the shelf prospectus has been published.
- (2) The period between publication of supplement to the prospectus and the previous supplement to the prospectus or shelf prospectus should not be less than six months.
- (3) The last supplement to the prospectus shall be published within a time period of not more than three years from the date of publication of the shelf prospectus.
- (4) The supplement to the prospectus for each issue shall contain updated status of the information contained in the shelf prospectus. The supplement to the prospectus shall contain the following:
 - (i) Reference of the shelf prospectus including date of publication of the shelf prospectus and date of publication of the supplements published earlier, if any;
 - (ii) Advices for investors, relating to reading of risk factors; prohibition of making fictitious application; consolidated and multiple bids etc.;
 - (iii) name of the Issuer; number of securities to be issued under this tranche; the offer price; date of subscription; subscription period; name of consultant to the issue, name of the bankers to the issue; names of underwriters;
 - (iv) date of publication of the supplement to the prospectus;
 - (v) contact details of the relevant person for seeking further information by investors;
 - (vi) website addresses from where the shelf prospectus, the supplement to the prospectus earlier published, if any, the supplement to the prospectus, application and bidding forms can be downloaded;
 - (vii) name of the offeror, if any; type of security; size of the issue including pre-IPO placement, if any, and offer price; dates for public subscription; minimum amount of application and basis of allotment; refund of subscription money; transfer, issue, dispatch and credit of securities;
 - (viii) in case of Islamic debt security additional information like tenor; expected rate of return; redemption schedule; conversion options, if any; detail of assets backing the instrument; redemption reserve, if any; amount raised through earlier tranches;

- (ix) in case of issue of Sukuk, additional information like transaction structure, names and role of related parties like originator, service providers etc.;
- (x) in case of book building, the bidding procedure including investors' eligibility for bidding; minimum bid value; date and time for registration of the prospective bidders; bidding period; date and time for revision and withdrawal of bids; rejection of bids; strike price determination; basis of allotment, refund/unblocking of margin money;
- (xi) Pricing of the security being offered;
- (xii) Minimum amount which must be raised;
- (xiii) Dividend history of the *modaraba*;
- (xiv) In case of Islamic debt security additional information like tenor; expected rate of return; redemption schedule; conversion options, if any; credit rating; name of the rating agency; detail of assets backing the instrument; redemption reserve, if any;
- (xv) Addresses from where copies of the prospectus can be obtained in physical form along with time and dates for collection;
- (xvi) detail of approvals obtained including date of approval, name of the approving authority, relevant law and clause under which approval has been granted; disclaimer, if any, by the approving authority and name of the securities exchange where the security will be listed;
- (xvii) All risk factors which in the opinion of the *modaraba* may be assumed by investor whether specific to the issuer; and
- (xvii) Financial snapshots based on last three years audited accounts.

SECTION G
REPORTS TO BE SET OUT IN THE SUPPLEMENT
TO THE PROSPECTUS

In the supplement to the prospectus, the following reports and statements shall be set out:

- (1) Auditors updated reports on income statement, balance sheet, modaraba fund and breakup value per modaraba certificates in the form and manner as disclosed in full prospectus.
- (2) In case of *Islamic* debt security:
 - (i) summary of the updated, if any, credit rating report by the credit rating agency;
 - (ii) report by the *modaraba*'s auditors on security backing the issue; and
 - (iii) report by the trustee that the security arranged and the mechanism for its enforcement, if needed, is appropriate for safeguarding interest of the security holders.

- (3) In case of Sukuk and asset based securitization transaction, brief on the transaction structure.
- (4) In case of Sukuk or other Shari'ah compliant instrument, Shari'ah certification by the Shari'ah advisors to the issue.
- (5) A statement by the board of directors or by the chief executive officer or the chief financial officer duly authorized by the board that the supplement contains a fair summary of the key information set out in the prospectus.

FOURTH SCHEDULE

[See section 14]

FORM OF STATEMENT IN LIEU OF PROSPECTUS OF AN UNLISTED MODARABA

Matters to be specified and Reports to be set out therein

SECTION A

2. The name of *modaraba*.
3. Type of *modaraba* i.e.:
 - (a) Multipurpose *modaraba* or Specified Purpose *modaraba*.
 - (b) *Modaraba* for a definite time or *modaraba* for an indefinite time.
4. Description of business to be undertaken by the *modaraba* and its prospects.
5. Amount of the proposed *modaraba* fund:

Rs. _____ divided into _____ *modaraba* certificates of Rs. _____ each to be issued at Rs. _____ each.
6. Principal place of business.
7. The name of the *modaraba* management company and the address of its registered office.
8. The names, occupations, other directorship and addresses of the directors of the *modaraba* management company.
9. Description of the business of *modaraba* management company.
10. The amount to be subscribed by the *modaraba* management company, its directors and officers in their own name.
11. The form of *modaraba* certificate to be issued.
12. The names and addresses of the auditors of the *modaraba* and that of *modaraba* management company.
13. Particulars as to the minimum amount which in the opinion of the directors of the *modaraba* management company must be raised by the issue of *modaraba* certificates

in order to provide the sums required to be provided in respect of each of the following matters:

- (i) estimated price of any property to be purchased which is to be defrayed in whole or in part out of the proceeds of the issues;
 - (ii) any preliminary expenses payable by the *modaraba* and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any certificate in the *modaraba*;
 - (iii) working capital; and
 - (iv) other expenditure.
14. In case it is proposed to acquire a running business, net profit / loss of that business for the last 3 years:

Year ended	Amount of net profit / loss	Business carried on since (date)	Direct or indirect interest, if any, of the modaraba management company or any of its directors or shareholders or any of its key executives

15. Details of preliminary expenses:

S. No.	Particulars of payment	Amount of preliminary expenses	Paid / Payable to	Paid by	Payable by	Consideration (in cash or kind to be specified)

16. Details of all other material contracts intended to be executed by the *modaraba*:-

S. No.	Nature of contract	Name of the parties to contracts	Important terms & conditions of contracts	Direct or indirect interest if any, of the <i>modaraba</i> management company or any of its directors or shareholders or any of its key executives

(Copies of contracts to be enclosed. If a contract is not reduced in writing, a memorandum giving full particulars and if not in English, its translation in English or Urdu shall be enclosed)

Signatures of all the Directors

S. No.	Name	Signatures

FIFTH SCHEDULE

[See Section 24]

DISCLOSURE REQUIREMENTS AS TO FINANCIAL STATEMENTS OF A MODARABA AND ITS SUBSIDIARIES

PART I

GENERAL REQUIREMENTS

- I. All *modarabas* and their subsidiaries shall follow the International Financial Reporting Standards in regard to financial statements as are notified for the purpose in the official Gazette by the Commission, under sub section (1) of section 225 of the Companies Act.
- II. The disclosure requirements, as provided in this schedule, are in addition to the disclosure requirements prescribed in International Financial Reporting Standards notified by the Commission and shall be made in the notes to the accounts unless specifically required otherwise.
- III. In addition to the information expressly required to be disclosed under this schedule, there shall be added such other information as may be considered necessary to ensure that required disclosure is not misleading.
- IV. In this schedule, unless there is anything repugnant in the subject or context—
 - 1.— capital reserve includes:
 - (a) certificate premium account;
 - (b) reserve created under any other law or the rules for the time being in force;
 - (c) reserve arising as a consequences of scheme of arrangement; and
 - (d) any other reserve not regarded free for distribution by way of dividend;
 - 2.— executive means an employee, other than the chief executive and directors, whose basic salary exceeds twelve hundred thousand rupees in a financial year;

- 3.— revenue reserve means reserve that is normally regarded as available for distribution through the profit and loss account, including general reserves and other specific reserves created out of profit and un-appropriated or accumulated profits of previous years;

V. Any word or expression used herein but not defined in this Act or the Companies Act shall have the same meaning as under the International Financial Reporting Standards;

VI. The following shall be disclosed in the financial statements, namely:

1. General information about *modaraba* comprising the following:
 - (a) Geographical location and address of all business units including mills/plant;
 - (b) Particulars of immovable fixed assets, including location and area of land;
 - (c) The capacity of an industrial unit, actual production and the reasons for shortfall;
 - (d) Number of persons employed as on the date of financial statements and average number of employees during the year, separately disclosing factory employees;
 - (e) Name of associated companies or related parties or undertakings along with the basis of relationship describing common directorship and percentage of shareholding.
 - (f) Party wise certificate holding in *modaraba* including the modaraba management company and its related parties
2. In respect of associated companies, subsidiaries, joint ventures or holding companies incorporated outside Pakistan, following shall be separately disclosed;
 - (i) Name of undertaking, registered address and country of incorporation;
 - (ii) Basis of association;
 - (iii) Aggregate Percentage of shareholding, including shareholding through other companies or entities;
 - (iv) Name of Chief Executive Officer or Principal Officer or Authorized Agent;

- (v) Operational status; and
 - (vi) Auditor's opinion on latest available financial statements.
3. General nature of any financing facilities available under any contract, other than trade credit available in the ordinary course of business, and not availed at the date of the statement of financial position;
 4. Any penalty in terms of money or otherwise imposed under any law by any authority, shall be disclosed in the first annual report furnished after the imposition of the penalty. If, as a result of any appeal, revision petition, or review application, such penalty is reduced, enhanced or waived, the original penalty imposed shall nevertheless be disclosed, and the fact of any reduction, enhancement or waiver shall be disclosed, in the first annual report furnished after such reduction, enhancement or waiver;
 5. Summary of significant transactions and events that have affected the financial position and performance during the year;
 6. In financial statements issued after initial or secondary public offering(s) of securities or issuance of Islamic debt instrument(s) implementation of plans as disclosed in the prospectus/offering document with regard to utilization of proceeds raised shall be disclosed till full implementation of such plans;
 7. Particulars of foreign modaraba certificate holders holding more than 5% of paid up modaraba fund:
 - (i) Names and address of beneficial owners and legal status along with the name of Chief Executive or Principal Officer or Authorized Agent;
 - (ii) Name and particulars of Pakistani resident associated with such modaraba certificate holder or entity, if any; and
 - (iii) Detail of conditions and compliance status thereof, imposed by regulatory authorities in Pakistan/foreign jurisdiction for foreign investments, if any.
 8. In cases where financing has been extended or investments (both short term and long term) have been made in foreign companies or undertakings, the following disclosures are required to be made:
 - (i) Name of the company or undertaking along with jurisdiction where it is located;

- (ii) Name and address of beneficial owner of investee company, if any;
 - (iii) Amount of finance/investment (both in local and foreign currency);
 - (iv) Terms, conditions and period for which financing or investments have been made;
 - (v) Amount of return received;
 - (vi) Details of all litigations against the Investee company in the foreign jurisdictions;
 - (vii) Any default/breach relating to foreign loan or investment; and
 - (viii) Gain or loss in case of disposals of foreign investments.
9. In cases where *modaraba* has made export sales following disclosures are required to be made in respect of outstanding trade debts:
- (i) Amount of export sales made in each foreign jurisdiction along with break up into confirmed LC, contract or other significant categories;
 - (ii) Name of company or undertaking in case of related party;
 - (iii) Name of defaulting parties, relationship if any, and the default amount; and
 - (iv) Brief description of any legal action taken against the defaulting parties.
10. Particulars of the financing obtained by the *modaraba*:
- (i) Financing obtained as per Islamic mode;
 - (ii) *Shari'ah* compliant bank deposits/bank balances;
 - (iii) Profit earned from *Shari'ah* compliant bank deposits/bank balances;
 - (iv) Gain/loss or dividend earned from *Shari'ah* compliant investments;

- (v) Exchange gain earned from actual currency;
- (vi) Profit paid on Islamic mode of financing;
- (vii) Relationship with the finance provider; and
- (viii) Profits earned or interest paid on any conventional loan or advance.

PART II

REQUIREMENTS AS TO STATEMENT OF FINANCIAL POSITION

11. Following items shall be disclosed as separate line items on the face of the financial statements;
 - (i) Revaluation surplus on property, plant and equipment;
 - (ii) Long term deposits and prepayments;
 - (iii) Unpaid dividend;
 - (iv) Unclaimed dividend; and
 - (v) Cash and bank balances.

Fixed Assets

12. Where any property or asset acquired from the funds of the *modaraba* and is not held in the name of the *modaraba* or is not in the possession and control of the *modaraba*, this fact along with reasons for the property or asset not being in the name of or possession or control of the *modaraba* shall be stated; and the description and value of the property or asset, the person in whose name and possession or control it is held shall be disclosed;
13. Land and building shall be distinguished between free-hold and leasehold;
14. Forced sale value shall be disclosed separately in case of revaluation of property, plant and equipment;
15. In the case of sale of fixed assets, if the aggregate book value of assets exceeds five hundred thousand rupees, following particulars of each asset shall be disclosed:
 - (i) cost or revalued amount, as the case may be;

- (ii) the book value;
- (iii) the sale price and the mode of disposal (e.g. by tender or negotiation);
- (iv) the particulars of the purchaser;
- (v) gain or loss; and
- (vi) relationship, if any, of purchaser with *modaraba* or any of directors of the modaraba management company.

Long Term Investments

16. Disclosure that the investments in associated companies or undertakings have been made in accordance with the requirements under the Companies Act.

Long Term Loans and Advances

17. With regards to financing, following shall be disclosed:
- (i) that the financings have been made in compliance with the requirements of this Act;
 - (ii) the purposes for which financings were made; and
 - (iii) reconciliation of the carrying amount at the beginning and end of the period, showing disbursements and repayments;
18. In case of any financing obtained/provided, at terms other than arm's length basis, reasons thereof shall be disclosed;
19. In respect of financing to associates and related parties there shall be disclosed:
- (i) the name of each associate and related party;
 - (ii) the terms of loans and advances;
 - (iii) the particulars of collateral security held, if any;
 - (iv) the maximum aggregate amount outstanding at any time during the year calculated by reference to month-end balances;
 - (v) provisions for doubtful financing; and
 - (vi) financing written off, if any.
20. Provisions for doubtful financing; and

21. Financing written off, if any.

Current Assets

22. In respect of financing and other receivables from associates and related parties there shall be disclosed:

- (i) the name of each associate and related party;
- (ii) the maximum aggregate amount outstanding at any time during the year calculated by reference to month-end balances;
- (iii) receivables, that are either past due or impaired, along with age analysis distinguishing between trade debts, loans, advances and other receivables;
- (iv) financing written off as irrecoverable, distinguishing between trade debts and other receivables;
- (v) provisions for doubtful or bad debts distinguishing between trade debts, loans, advances and other receivables; and
- (vi) justification for reversal of provisions of doubtful debts, if any
- (vii) provision, if any, made for bad or doubtful loans and advances or for diminution in the value of or loss in respect of any asset shall be shown as a deduction from the gross amounts;

Modaraba Fund and Reserves

23. In respect of modaraba fund, following shall be disclosed separately;

- (i) certificates allotted for consideration paid in cash;
- (ii) certificates allotted as bonus certificates;
- (iii) treasury certificates.

24. Capital and Revenue reserves shall be clearly distinguished. Any reserve required to be maintained under this Act shall be separately disclosed. Any legal or other restrictions, on the ability of the *modaraba* to distribute or otherwise, shall be disclosed for all kind of reserves maintained by the *modaraba*;

Non-Current Liabilities

25. Amount due to associated companies and related parties shall be disclosed separately.

Current Liabilities

26. Following items shall be disclosed as separate line items;
- (i) Payable to provident fund;
 - (ii) Deposits, accrued liabilities and advances;
 - (iii) Financing from banking companies and other financial institutions, other than related parties;
 - (iv) Financing from related parties including sponsors and directors along with purpose and utilization of amounts; and
 - (v) Financing shall be classified as secured and unsecured.
27. In the case of provident fund/provident fund trust, maintained by the *modaraba* a statement that, investments in units of collective investment schemes registered as notified entities with the Commission, listed equity and listed debt securities out of provident fund/trust have been made in accordance with the provisions of Section 218 of the Companies Act.
28. In respect of security deposit payable, following shall be disclosed:
- (i) Bifurcation of amount received as security deposits for goods/services to be delivered/provided, into amounts utilizable for *modaraba* business and others;
 - (ii) Amount utilized for the purpose of the business from the Security deposit in accordance with requirements of written agreements, in terms of Section 217 of the Companies Act; and
 - (iii) Amount kept in separate bank account.

Contingencies and Commitments

29. In describing legal proceedings, under any court, agency or government authority, whether local or foreign, include name of the court, agency or authority in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis of the proceeding and the relief sought;

30. Details of the off-balance sheet exposure such as financial and other guarantees, performance related obligations, underwriting commitments or other commitments with certain drawdown.

PART III

REQUIREMENTS AS TO PROFIT AND LOSS ACCOUNT

31. Following items shall be disclosed as deduction from turnover as separate line items;
- (i) trade discount; and
 - (ii) sales and other taxes directly attributed to sales.
32. The aggregate amount of auditors' remuneration, showing separately fees, expenses and other remuneration for services rendered as auditors and for services rendered in any other capacity and stating the nature of such other services. In the case of joint auditors, the aforesaid information shall be shown separately for each of the joint auditors;
33. In case, donation to a single party exceeds Rs. 500,000, name of donee(s) shall be disclosed and where any director or his spouse has interest in the donee(s), irrespective of the amount, names of such directors along with their interest shall be disclosed;
34. Management assessment of sufficiency of tax provision made in the *modaraba's* financial statements shall be clearly stated along with comparisons of tax provision as per accounts *viz a viz* tax assessment for last three years.
35. Complete particulars of the aggregate amount charged to the *modaraba* shall be disclosed separately for the directors, chief executive and key executives together with the number of such directors and executives such as:
- (i) fees for any services rendered other than the services to be provided by the *modaraba* management company;
 - (ii) managerial remuneration for the key executives;
 - (iii) commission or bonus, indicating the nature thereof for the key executives;
 - (iv) reimbursable expenses which are not in the nature of a perquisite or benefit;
 - (v) pension, gratuities, *modaraba's* contribution to provident, superannuation and other staff funds, compensation for loss of office and in connection with retirement from office;

- (vi) other perquisites and benefits in cash or in kind stating their nature and, where practicable, their approximate money values; and
36. In case of royalties paid to companies/entities/individuals, following shall be disclosed:
- (i) Name and registered address; and
 - (ii) Relationship with company or directors, if any.

STATEMENT OF OBJECTS AND REASONS

The proposed Bill intends to regulate the business of *modaraba* and modaraba management company to provide protection to the investors, modaraba certificate holders and general public. The existing Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 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.

The proposed bill will address the practical difficulties and to cater with the current market conditions. Furthermore, in view of recent *modaraba/musharakah* scam, the Senate Standing Committee on Finance, Revenue, Economic Affairs, Statistics and Privatization in its meeting held on 17.9.2015 had also recommended that the SECP in consultation with the Ministry of Law should propose necessary amendments in the regulatory framework to effectively regulate the sector and prevent such scams in future.

Additionally, the Ordinance remains fundamentally incomplete, lacks a proper and logical structure and suffers from numerous inconsistencies and gaps. There is a need that the Ordinance be repealed and replaced with a comprehensive modern and all-encompassing piece of legislation. Accordingly, SECP has drafted the proposed Bill to effectively regulate business of *modaraba* and modaraba management company.

MINISTER-IN-CHARGE