

Before Tariq Naseem, Registrar Modaraba

In the matter of Show Cause Notice issued to Awwal Modaraba Management Limited

Date of Hearing	April 11, 2023
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Order-Redacted Version

Order dated June 6, 2023 was passed by Registrar Modaraba in the matter of Awwal Modaraba Management Limited (manager of First Prudential Modaraba, the First Pak Modaraba, the KASB Modaraba, and the Awwal Modaraba). Relevant details are given as hereunder:

Nature	Details
1. Date of Action	Show Cause Notice dated February 28, 2023
2. Name of Company	Awwal Modaraba Management Limited
3. Name of Individual	The proceedings initiated against the Directors of the Awwal Modaraba Management Limited, including its chairman and the chief executive officer
4. Nature of Offence	Proceedings under regulation 34A for contravention of regulation 9 read with regulation 2 (1) (v) & (x) and 3 of the Modaraba Regulations, 2021
5. Action Taken	<p>Key findings of default of Modaraba Regulations, 2021 (the "Regulations") were reported in the following manner:</p> <ul style="list-style-type: none">✓ With respect to the alleged contravention of clause (viii) of regulation 9 of the Regulation, considering the information available on record, particularly the manner of conduct of transactions, disclosure in financial statements, and responses provided to the Commission, I am of the view that the transactions fall within the definition of the finance provided in the Regulations, and thus clause (viii) of regulation 9 of the Regulations has been violated. Consequently, contravention of regulation 3 of the Regulation has also been established.✓ Regarding the arguments concerning retroactive application of Regulation 34A and the penal provision for violation of regulation 9 and 3 of the Regulations, it is important to note here that the Regulations have been made under sub-section (1) of Section 41A of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (the "Modaraba Ordinance"). Sub-

section (2) of the said section 41A of the Modaraba Ordinance stipulates that:

“any regulation made under sub-section (1) may provide that a contravention thereof shall be punishable with a fine which may extend to one hundred thousand rupees and, where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues”.

It is agreed that at the time of the above-mentioned contraventions, the Regulations did not provide for the amount of the fine, and thus a monetary penalty cannot be imposed for the above-mentioned contraventions. However, I am of the view that the absence of a penalty provision does not imply that a violation of the Regulations is not an offence.

- ✓ With respect to the arguments against the issuance of the Notice to the wrong persons, it may be noted that the scope of regulation 34A of the Regulations sufficiently covers any person who fails to comply with any provision of the Regulations. The Notice is an interim order and should not be interpreted as a final order because the case has not yet been decided; as a result, none of the rights of any individual protected by the various articles of the Constitution of Pakistan cited in the response have been violated in any way. Further, Section 33 of the Modaraba Ordinance clearly provides for the liability of the directors of the Modaraba Company, and a director has to prove that the offence was committed without his knowledge, or that he exercised all diligence to prevent its commission to be deemed guilty of the offence. Attention is also invited to Section 12 of the Modaraba Ordinance, which allows a Modaraba to sue and be sued in its own name through the Modaraba Company. In the presence of this clear provision in the parent and specialized laws, any reference to other laws, including the Companies Act, 2017, by virtue of its Section 505, is not relevant here. Additionally, the argument that since regulation 9 starts with the word "modaraba," hence the Notice should have been served to the modaraba only, is not valid as the Modaraba law entrusts the Modaraba Company and its directors with the responsibility of compliance. I also do not consider it appropriate to initiate the

	<p>proceeding against the Modaraba and penalize it for a contravention by the Modaraba Company, which is the sole manager of the Modaraba. Hence, it is concluded that the Notice has not been issued to the wrong persons. However, since the Modaraba Company has categorically confirmed that the decision to finance the holding company in contravention of regulations 3 and 9 of the Regulations was made by management, the proceedings against the directors, with the exception of the CEO, are being dropped.</p> <ul style="list-style-type: none">✓ With respect to the position of the Authorized Representative that the Regulations suffer from legal infirmity where their promulgation has not complied with publication requirements for the promulgation of regulations pursuant to Section 41A of the Modaraba Ordinance. Attention is invited to the facts that while promulgating the Regulations pursuant to requirements of Section 41A of the Modaraba Ordinance, with due consideration and approval of the Commission, the respective requirements were followed, and the Regulations were not only published in the official gazette but also placed on the Commission's website, with the requisite time line given in accordance with the respective requirements for eliciting public opinion, and announcements were also made. Additionally, before promulgation, the Regulations were shared with the Modaraba Company through NBFi and the Modaraba Association and finalized in consultation with its management and members, which included the Modaraba Company. Hence, the condition precedent has been met, and the Regulations have been made legally.✓ Finally, the argument of the Authorized Representative that the Commission has not addressed the manner, extent, and scope of delegation of its functions and powers through any regulations issued by it. It is important to note here that the powers of the Registrar Modaraba in relation to Modaraba have been delegated by virtue of Section 39 of the Modaraba Ordinance, whereas the Commission's powers over listed companies have been delegated by Section 10 of the SECP Act, 1997. The undersigned has the statutory authority to deal with such matters, so the Notice was issued, the current proceedings were initiated, and this order was
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	<p>issued in accordance with Modaraba law, with lawful authority and due process.</p> <p>In view of the foregoing and the fact that the default has already been removed, the Modarabas have now complied with the stated legal provisions, and with the assurance that the Modaraba Company and its director are committed to upholding the mandate of the law, therefore taking a lenient view, I hereby conclude the matter by directing the CEO and the Modaraba Company to remain careful in the future and ensure meticulous compliance with all applicable provisions of the law in the future.</p>
6. Penalty Imposed	There was no penalty imposed.
7. Current Status of the Order	There was no penalty imposed.

Redacted version issued for placement on the website of the Commission.