



**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT
(MODARABA WING)**

Before Tariq Naseem, Registrar Modaraba

In the matter of

Modaraba Al-Mali, managed by Assetplex Limited (Formerly Bank Islamic Modaraba Investments Limited)

Number and Date of Notice: SC/M/MS/Mali/30/2022-98 dated April 28, 2022

Date of Hearing: May 16, 2022

Present for Respondent: Mr. Rashid Mateen Khan – Company Secretary

Date of Order May 23, 2022

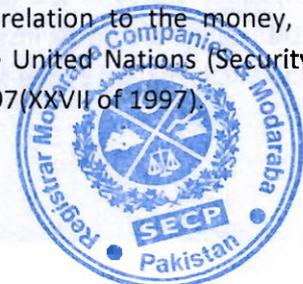
ORDER

Under Sub-section 6(A)(2)(h) of Anti-Money Laundering Act, 2020, read with sub-rule (1) of Rule 4 of the AML/CFT Sanctions Rules, 2020 and Regulation 31 of the Securities and Exchange Commission of Pakistan (Anti-Money Laundering and Countering Financing of Terrorism) Regulations, 2020

This Order shall dispose of the proceedings initiated against Modaraba Al-Mali (the "Modaraba") managed by Assetplex Limited (Formerly Bank Islamic Modaraba Investments Limited) (the "Modaraba Company") through show cause notice dated April 28, 2022 (the "Notice") issued under the provisions of sub-section 6(A)(2)(h) of Anti-Money Laundering Act, 2020 (the "AML Act"), read with sub-rule (1) of Rule 4 of the AML/CFT Sanctions Rules, 2020 (the "AML Rules") and Regulation 31 of the Securities and Exchange Commission of Pakistan (Anti-Money Laundering and Countering Financing of Terrorism) Regulations, 2020 (The "AML Regulations").

2. Brief facts of the case are that the Securities and Exchange Commission of Pakistan (the "Commission") issued Statutory Regulatory Order No. 920(I)/2020 dated September 28, 2020 (the "SRO") under section 6A of the AML Act which states that:

"Anti-Money Laundering Act, 2020 (VII of 2010) ("the AML Act") through the Anti-Money Laundering (Second Amendment) Act, 2020 under section 6A (1) and Schedule IV of the AML Act has designated Securities and Exchange Commission of Pakistan ("SECP" or the "Commission") as an AML/CFT Regulatory Authority for any reporting entity licensed or regulated by SECP under relevant laws administered by SECP. Accordingly, under section 6A of the AML Act, the SECP is now empowered to issue regulations, directions and guidelines under the AML Act, 2010. The AML Act require all Reporting Entities to ensure implementation of Targeted Financial Sanctions (TFS) of freezing and prohibition obligations in relation to the money, assets or property of the designated or proscribed persons under the United Nations (Security Council) Act, 1948 (XLV of 1948) and under the Anti-Terrorism Act, 1997 (XXVII of 1997).





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Further, the term Regulated Entity ("RP") means securities brokers, futures brokers, Insurers, Takaful Operators, NBFCs and Modarabas, regulated by the Commission under the administered legislation."

3. Furthermore, Para D of SRO requires the regulated persons to comply with the following:

"Compliance report on Statutory Regulatory Orders issued by the Ministry of Foreign Affairs under United Nations (Security Council) Act, 1948 or intimation from National Counter Terrorism Authority / Law Enforcement Agencies/Home Departments of Provinces/Ministry of Interior regarding updates in the list of proscribed persons(s) / entity(ies) under the Anti-Terrorism Act, 1997, shall be submitted to the Commission within forty-eight hours of receiving the same in the manner as may be instructed from time to time by the Commission."

4. The Commission vide email dated May 14, 2020 shares guidelines to all regulated persons with respect to compliance of the directive, clearly stating that:

"It is reiterated that the implementation of Targeted Financial Sanctions is not risk based. Therefore, RPs should allocate appropriate human and technological resources to immediately scan their customer data bases and their Beneficial Owners /associates for any matches with the stated designated/proscribed person(s)/entity(ies); Required actions should be taken immediately on the receipt of notifications issued by the Ministry of Foreign Affairs on United Nations Security Council Resolutions or intimation from National Counter Terrorism Authority regarding updates in list of proscribed persons under the Anti-Terrorism Act, 1997."

5. Further, the Commission vide email dated October 7, 2020 issued a clarification with respect to compliance with the Directive as under:

"Please note that FATF Recommendation 6.4 and 6.5(a) requires countries to implement Targeted Financial Sanctions (TFS) without delay. In its glossary of FATF Methodology (as attached), the FATF defined without delay as "within the matter of hours of a designation". Therefore, in light of aforementioned references, all financial institutions (FIs) are required to take freezing actions irrespective of any holiday/weekends.

As an FI, you are therefore required to implement the necessary mechanism in order to demonstrate compliance of relevant provisions of AML/CFT regulations and TFS Directive. Any failure in the compliance will lead to an enforcement action under AML/CFT Sanction Rules 2020 issued under AML Act 2010."

6. In order to facilitate the submission of the above referred compliance reports by the regulated persons, the Commission has automated the reporting mechanism for its regulated entities. The review of the compliance status of the Modaraba conducted during the period of July 1, 2021 to March 31, 2022 had transpired that in six instances, the Modaraba did not submit the required compliance report in relation to SRO(s) issued by the Ministry of Foreign Affairs and National Counter Terrorism Authority,





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within 48 hours of receiving the same and intimation through the automated reporting system i.e. SECP's eService's Portal.

7. Consequently, the Notice dated April 28, 2022 under sub-section 6(A)(2)(h) of AML Act read with sub-rule (1) of rule 4 of the AML Rules and regulation 31 of the AML Regulations was served to Chief Executive Officer ("CEO") and all directors of the Modaraba as to why penalty may not be imposed for breach of the SRO. The Modaraba through its CEO was also provided an opportunity of personal hearing on May 16, 2022.

8. Hearing in the matter was held on May 16, 2021 on Zoom. Mr. Rashid Matin Khan, Company Secretary/CFO appeared on behalf of chief executive and all directors of the Modaraba. In the hearing, Mr. Rashid stated that he has not received the Notice but only the email for the scheduled hearing. This appears to be because of recent transfer of registered office of the Modaraba Company from Karachi to Lahore whereas he is still serving from the branch office of Karachi. If shared through email, he will submit the written response to the Notice at the earliest.

9. Copy of the Notice was shared with Mr. Rashid through email and in response, vide letter dated May 16, 2022, he submitted the response to the Notice wherein it is contended that the Modaraba has been submitting similar information on regular basis within the prescribed time period. With regard to delayed instances mentioned in the Notice, it is submitted that it was an inadvertent oversight. Further, the information submitted with respect to accounts mentioned in the SECP system was also Nil. Mr. Rashid assure stringent compliance by the Modaraba in future and requested to condone the delay and consider waiver of any penalty in this respect.

10. Before proceeding to decide the case, I deem it necessary to advert to the following relevant provisions of the AML Act, the AML Rules and the AML Regulations under which the Notice was served on the Modaraba:

(i) Sub-section (2) of section 6A of the AML Act provides that AML/CFT regulatory authority shall exercise the following powers and functions with respect to its reporting entities, namely: -

"(h) impose sanctions, including monetary and administrative penalties to the extent and in the manners as may be prescribed, upon their respective reporting entity, including its directors and senior management and officers, who violates any requirement in section 7(1), 7(3) to 7(6) and 7A to 7H and any rules or regulations made thereunder or those who fail to comply with the TFS regulations. Any person aggrieved by the imposition of sanctions under this clause may prefer an appeal in such manner and within such period to such authority as may be prescribed"

(ii) Sub-rule (1) of rule 6 of the AML Rules provides that:





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"the AML/CFT Regulatory Authority shall apply monetary penalties upto Rs. 100 Million per violation, in accordance with the risk-based penalty scale of the respective AML/CFT Regulatory Authority"

Sub-regulation 1 of regulation 31 of the AML Regulations provides that: -

"(1) Any contravention of these regulations shall be cognizable by the Commission in accordance with section 6A of the AML Act and liable to sanction provided in the AML/CFT Sanctions Rules, 2020 and imposed by the Commission according to Clause (h) of Sub-section (2) of Section 6A of AML Act."

11. As regards the matter at hand, I have analyzed the facts of the case, relevant provisions of the law, representations made by the respondent Modaraba in its written response to the Notice and arguments advanced at the time of hearing. As per available record, it has been observed that a warning order and two penalty orders dated December 17, 2019, June 3, 2021 and August 24, 2021, respectively were issued to the Modaraba Company on similar kind of violations. Although the default is established, yet considering that authorized representative has assured timely compliance in future, I do not intend to discourage the management by imposing maximum fine for the aforesaid default. Taking a lenient view in the matter, I, in exercise of powers conferred upon me through S.R.O.496(I)/2021 dated April 20, 2021, instead of imposing maximum penalty of Rs. 100 million under Section 6 of AML Rules, impose a penalty of Rs.100,000/- on the Modaraba Company with the direction to the management of the Modaraba Company to meticulously comply with the requirements of the law in letter and spirit in future.

12. The Chief Executive of the Modaraba Company is hereby directed to deposit, within thirty days of the date of the receipt of this Order, the aforesaid penalty of Rs.100,000/- (Rupees One Hundred Thousand Only) in the designated bank account maintained in the name of Securities & Exchange Commission of Pakistan with MCB Bank Limited and furnish original receipted challan to the Commission.

13. Issued under my hand and seal this 23rd May, 2022.

Tariq Naseem
Registrar Modaraba

