

ISLAMABAD, MONDAY, JANUARY 26, 1981

PART II  
Statutory Notifications (S.R.O)  
GOVERNMENT OF PAKISTAN  
MINISTRY OF FINANCE

NOTIFICATION

Islamabad, the 26<sup>th</sup> January, 1981

S.R.O.83/(I)/81. In exercise of the powers conferred by section 41 of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980), the Federal Government is pleased to make the following rules, namely :-

**THE MODARABA COMPANIES AND MODARABA RULES, 1981**

1. Short title and commencement. (1) These rules may be called the Modaraba Companies and Modaraba Rules, 1981.

(2) They shall come into force at once.

2. Definitions (1) In these rules, unless there is anything repugnant in the subject or context,

- (a) "Advocate" means a person entered in any role under the provisions of the Legal Practitioners and Bar Councils Act, 1973 (XXV of 1973);
- (b) "Certificate holders" means holders of Modaraba Certificates;
- (c) "Chairman" means the Chairman of the Religious Board;
- (d) "Form" means a form set out in the First Schedule;
- (e) "Member" means a member of the Religious Board and includes the Chairman;
- (f) "Ordinance" means the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980);
- (g) "Religious Board" means the Board constituted under section 9;
- (h) "Section" means a section of the Ordinance;

- (i) All other terms and expressions used but not defined in these rules shall have the same meanings as are assigned to them in the Ordinance.

3. Registrar. \_\_ (1) The headquarters of the Registrar shall be at Islamabad.

(2) Without prejudice to the powers, duties and functions conferred or imposed on him by the Ordinance, the following shall be the duties and functions of the Registrar, namely:-

- (a) to receive applications for registration as modaraba companies;
- (b) issue to a modaraba company a Certificate of Registration which indicates the serial number of registration, year of registration and office of issue and has the official seal of the Registrar affixed thereto;
- (c) to provide secretarial services to the Religious Board;
- (d) to refer the applications for floatation of modaraba which shall be in Form-I, to the Religious Board and obtain their certificate in writing in Form II that the modaraba is not a business opposed to the injunctions of Islam;
- (e) to receive applications for and grant Certificate of Authorization in Form III for floatation of modarabas on such conditions as he may deem fit in keeping with the provisions of section 11;
- (f) to lay-down, receive and examine all reports, accounts and other documents referred to in section 14 and to pass orders for and receive such additional documents or reports or information as may be considered necessary;
- (g) to issue a certificate in Form IV on receipt of a declaration in Form V that Modaraba Certificate have been allotted in an amount not less than the minimum amount stated in the prospectus to be raised in order to provide for the business operations and expenses;
- (h) to allow issue of certificates of a modaraba at a premium or at a discount.

(3) The Registrar shall examine or cause to be examined any documents received and return for rectification any document filed with or delivered to him for registration, filing or recording if it is found to be defective or incomplete or mutilated and shall not register file or record such document until the requirements indicated by him have been complied with and a revised or corrected document furnished:

Provided that the Registrar may for special reasons instead of returning the document demand a fresh document or ask the modaraba company to depute a representative to rectify or complete the document as may be necessary.

(4) The Registrar shall not register, file or record any document in respect of which a fee is payable until such fee has been deposited in the correct head of account and receipt furnished to him and shall, pending the payment of such fee, act in the same way as if no such document had been tendered for registration, filing or record.

(5) When a document is accepted for being registered, filed or recorded, the Registrar shall issue an acknowledgement in Form VI of the First Schedule.

(6) All documents of each modaraba company and each modaraba shall be kept together, distinct and separate from those of other modaraba companies and modarabas.

(7) The Registrar shall make endorsement of the following particulars on every document registered, filed or recorded in his office, namely serial number (a separate serial number shall be given to each document); name of the modaraba company and of the modaraba; brief description of the document including its enclosures; and the date on which the document is registered, filed or recorded, and shall sign, and affix his official seal, to every such endorsement.

(8) In the office of the Registrar, there shall be maintained a register of modaraba companies and a register of modarabas in Forms VII and VIII in which particulars of the companies and the modarabas shall be entered in the order in which they are registered or authorized, as the case may be.

(9) In the pages allotted to each modaraba company in the register, a note shall be made of every document or fact relating to the Modaraba Company or modaraba which is registered, recorded or filed with the Registrar.

(10) The Registrar shall also cause an alphabetical index to be maintained of modaraba companies and modarabas in the register;

(11) The Registrar shall permit members of the public to inspect such registers and records of documents maintained under this rule and such other rules as he may deem fit, provided that, before such permission is granted, prescribed inspection fee has been paid.

(12) The inspection of the documents shall be allowed during the office hours and in the presence of the Registrar or a person authorized by him in his behalf.

(13) The Registrar shall, on the application of a person, grant copies of entries in the registers and documents as are open to inspection duly signed, sealed and dated by him on payment of the prescribed fees.

(14) The Registrar shall take cognizance of omission to file or register documents on due date or any other omission, lapse, irregularity or infraction of the law by or in relation to a modaraba company or modaraba.

(15) The Registrar shall institute such enquiries or proceedings in respect of any matter as may, in his opinion, be necessary to obtain information or evidence respecting defaults or any lapse, irregularity or infraction of the law by any modaraba company or in relation to a modaraba or any promoter, officer, employee, liquidator or receiver.

(16) The Registrar shall cause to be prepared and keep a seal for authentication of documents and certificates required for or connected with the registration of modaraba companies and modarabas and related matters.

(17) The Registrar may assign any of the duties prescribed under the Ordinance or these rules and generally regulate performance of duties and issue directions to any officer or officials subordinate to him in such manner as he may think fit.

(18) There shall be paid in respect of the several matters mentioned in the Second Schedule the several fees therein specified.

(19) All fees, charges and other sums paid or realized under the Ordinance or under any order of the Registrar, Tribunal or the Federal Government in pursuance of the Ordinance and the rules shall be accounted for to the Federal Government in the State Bank of Pakistan or any other bank acting as agent of that Bank or the Government Treasury under head "1213-ECONOMIC REGULATION-RECEIPTS UNDER MODARABA ORDINANCE" and the receipt thereof shall be furnished to the Registrar, the Tribunal or the Federal Government along with the documents, application or otherwise, as the case may be.

4. Registration of Modaraba Company. \_\_ (1) An application for registration of a modaraba company shall be made to the Registrar in Form IX.

(2) The application shall be accompanied by\_\_

- (a) five copies of the Memorandum and Articles of Association;
- (b) five copies of Certificate of incorporation;
- (c) receipted Treasury Challan in respect of the fees paid for the application;
- (d) five copies of the latest audited accounts, if the company has already been in business; and
- (e) a precise description of the business being done, if it is already engaged in business other than floatation of modaraba or if it proposes to undertake such business in addition to flotation and management of modarabas.

(3) The company shall make such changes in its Memorandum and Articles of Association or in their Board of Directors as may be required by the Registrar.

(4) The Registrar on being satisfied that the company is eligible to be registered shall issue a Certificate of Registration in Form X on such conditions as may be specified.

5. Tribunal.\_\_(1) A person appointed to constitute a Tribunal shall hold office for a term of three years unless he resigns or otherwise ceases to hold office earlier.

(2) A Tribunal shall, in consultation with the Federal Government, appoint such officers and staff as are considered necessary for carrying out the functions of the Tribunal.

(3) The hearing of and proceedings before a Tribunal shall be public unless the Tribunal for reasons recorded in writing:-

- (a) decides to hold the proceedings or any part thereof in private; or
- (b) gives directions as to the persons who may be present thereat; or
- (c) prohibits or restricts the publication of any part of evidence given before it or contained in any document filed before it.

(4) There shall be an official seal of a Tribunal which shall be in the custody of the Chairman or of an officer designed by him in this behalf.

6. Religious Board. \_\_ (1) The Religious Board shall consist of three members appointed by the Federal Government by notification in official Gazette, one of whom shall be the Chairman.

(2) Two of the members shall be religious scholars and the Chairman shall be a person who is, or has been, or is qualified to be a Judge of a High Court.

(3) Meetings of the Religious Board shall be held to consider applications for floatation of modaraba as and when called by the Chairman, but at least once in every two months unless there is no business to transact.

(4) The Board may wherever so required obtain clarification or additional information from the modaraba company or offer a personal hearing to the modaraba company before arriving at a decision.

(5) The proceedings of each meeting of the Religious Board shall be recorded in such manner as may be specified by it and the same shall be signed by the Chairman or, in his absence, by the member presiding over the meeting.

(6) All orders and decisions of the Religious Board shall be authenticated by the Chairman or a member or officer especially empowered in this behalf by the Board.

(7) The Religious Board shall give its decision within thirty days from the date of closure of its last hearing in a communication bearing official seal of the Board.

(8) A member of the Religious Board shall hold office for a term of three years unless he resigns, ceases to hold office or is removed earlier.

(9) Any casual vacancy shall be filled in by appointment by the Federal Government of a person qualified to be a member, for the un-expired term of the outgoing member.

(10) The members of the Board, other than a Chairman who is Judge of a High Court, shall be entitled to :-

- (a) a fixed fee of Rs.500/- per day;

- (b) traveling and daily allowance as admissible to Grade 20 officers of the Federal Government.

(11) The sittings of the Religious Board shall normally be held at Islamabad but the Board may sit in such places in Pakistan as it may from time to time decide.

(12) On being called upon to appear before the Religious Board appearance may be in person or through an authorized representative.

(13) All sittings of the Religious Board shall be presided over by the Chairman and in his absence by a member as may be nominated by him.

(14) There shall be an official seal of the Religious board which shall remain in the custody of the Chairman or an officer authorized by him in writing.

7. Capital of company also engaged in other business. \_\_\_ Unless it is a body corporate formed under any law and owned or controlled by the Federal or a Provincial Government, whether directly or through a company or corporation set up by such Government, a company which is also engaged in business other than floatation and management of modaraba shall be eligible for registration as a modaraba company only if it has a paid up capital of at least seven and a half million rupees of which an amount of not less than two and a half million rupees shall be set aside for the modaraba free from any encumbrances.

8. Accounts and audit. \_\_\_ (1) Every modaraba company shall cause to be kept proper books of account for each modaraba with respect to:-

- (a) all sums of money received and expended by the modaraba and the matters in respect of which the receipt and expenditure takes place;
- (b) all sales and purchases of goods by the modaraba; and
- (c) the assets and liabilities of the modaraba.

*Explanation :-* For the purpose of this sub-rule proper books of account shall not be deemed to be kept with respect to the matters aforesaid if there are not kept such books as are necessary to give a true and fair view of the state of the modaraba's affairs and to explain its transactions.

(2) The books of account shall be kept at the registered office of the Modaraba Company or at such other place as may be authorized by the Registrar.

(3) Where a modaraba has a branch office, the modaraba company shall be deemed to have complied with the provisions of sub-rule (1) and sub-rule (2) if proper books of account relating to the transactions effected at the branch office are kept at the branch office and proper summarized returns, made up to dates at intervals of not more than one month, are sent by the branch office to the registered office of the modaraba company or other place referred to in sub-rule (2).

(4) Every balance sheet of a modaraba shall give a true and fair view of the state of affairs of the modaraba as at the end of its financial year, and every profit and loss account **\*\*** [*cash flow statement and statement of changes in equity*] of a modaraba shall respectively give a true and fair view of the result of **\*\***[*its operations, cash flows and changes in equity*] for the year then ended.

9. Submission of annual report by modaraba company. — (1) The annual report required by section 14 to be furnished by the modaraba company shall include a balance sheet **\*\***[*a profit and loss account, a cash flow statement and a statement of changes in equity*] in respect of each modaraba and fullest information and explanations in regard to any reservation, observation, qualification or adverse remarks contained in the auditor's report.

(2) The balance sheet and profit and loss account included in the annual report prepared by the modaraba company shall comply with the requirements of the Third Schedule as nearly as possible **\*\***[*and the balance sheet, profit and loss account, cash flow statement and statement of changes in equity prepared by the modaraba company shall conform with such International Accounting Standards and other standards as are notified from time to time in the official Gazette by the Securities and Exchange Commission of Pakistan under sub-section (3) of section 234 of the Companies Ordinance, 1984 (XLVII of 1984)*].

(3) The balance sheet **\*\***[*profit and loss account, cash flow statement and statement of changes in equity together with the notes forming part thereof*] and profit and loss account and statement of financial changes shall be audited by the auditor of the modaraba and the report of the auditor shall be as prescribed in Form XI.

**\*\***[10. *Submission of periodical report. — Submission of periodical reports. — Every modaraba company shall, within one month of the close of first, second and third quarters of the financial year of each modaraba, prepare in accordance with such International Accounting Standards and other standards, as may be specified from time to time by notification in the official Gazette, for the purpose by the Securities and Exchange Commission of Pakistan under sub-section (3) of section 234 of the Companies Ordinance, 1984 (XLVII of 1984), AND TRANSMIT BY REGISTERED POST TO THE Registrar and under postal certificate to its certificate holders a profit and loss account, a cash flow statement and a statement of changes in equity for, and a balance sheet as at the end of, that quarter, whether audited or otherwise.*]

11. Annual balance sheet. — (1) The directors of every modaraba company shall some date not later than eighteen months after the floatation of each modaraba and subsequently once at least in every calendar year prepare an annual balance sheet **\*\***[*and profit and loss account and a cash flow statement and statement of changes in equity*] in respect of each modaraba for the period in the case of the first account since the floatation of the modaraba and in any other case since the preceding account.

(2) The accounting year adopted under the preceding sub-rule shall not be changed without the prior approval of the Registrar.

**\*\*Amendments made vide SRO No. 471(I)/2003, dated June 4, 2003.**

12. Authentication of balance sheet. \_\_ (1) Save as provided by sub-rule (2), the balance sheet \*\* [, *profit and loss account, cash flow statement and statement of changes in equity*] shall be signed by the chief executive and two directors of the modaraba company.

(2) When the total number of directors of the modaraba company for the time being in Pakistan is less than the number of directors whose signatures are required by sub-rule (1), then the balance sheet \*\*[, *profit and loss account, cash flows statement and statement of changes in equity*] shall be signed by all the directions for the time being in Pakistan or, if there is only one director for the time being in Pakistan, by such director, but in such a case there shall be sub-joined to the balance sheet \*\*[, *profit and loss account, cash flows statement and statement of changes in equity*] a statement signed by such directors or director explaining the reason for non-compliance with the provisions of sub-rule (1).

13. Access to minutes of proceedings of general meetings of modaraba company and of its directors.\_\_ The auditor of a modaraba shall have full access to the minute books of the modaraba company and in case the modaraba company is also engaged in other business he shall be provided with authenticated copies of the minutes and decisions concerning the affairs of the modaraba.

14. Information about the pattern of holding of certificates by subscribers. \_\_ A modaraba company shall also circulate along with the annual accounts information about the pattern of holding of the certificates by the certificate-holders in Form XII or as near thereto as possible.

15. Liability where proper accounts not kept. \_\_\_\_ (1) If at any time it is shown that proper books of account were not kept in relation to the modaraba, every director and officer of the modaraba company who is in default shall, unless he shows that he acted honestly and diligently and that in the circumstances in which the business of the modaraba company was carried on the default was excusable, be criminally liable.

(2) For the purposes of this rule, proper books of account shall be deemed not to have been kept in the case of any modaraba if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the modaraba, including books containing material entries from day to day in sufficient detail of all cash received and case paid, and where the trade or business has involved dealings in goods, statements of the annual stock-takings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

16. Expenses to be reimbursed to modaraba company's etc. \_\_ (1) The modaraba company shall be entitled to be reimbursed annually reasonable expenses other than any remuneration in respect of directors, officers and employee of the modaraba company.

(2) Such expenses shall be audited by the auditors of the modaraba company and classified under appropriate headings as used in Profit and Loss Account, and will form part of the annual accounts of the modaraba.

**\*\*Amendments made vide SRO No. 471(I)/2003, dated June 4, 2003.**

(3) For the purposes of the calculation of the remuneration payable to the modaraba company under section 18 the profit shown in the audited profit and loss account of the modaraba shall form the basis.

17. Capitalization of profits. \_\_\_ (1) The Board of Directors of a modaraba company may resolve that it is desirable to capitalize any part of the amount for the time being standing to the credit of any of the modaraba's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution and accordingly decide that such sum be set free for distribution amongst the Certificate holders who would have been entitled thereto if distributed by way of profit and in the same proportions on conditions that the same be not paid in cash but be applied either in or towards paying up any amounts for the time being unpaid on any certificates held by such members respectively or paying up in full un-paid issued certificates of the modaraba to be allotted and distributed credited as fully paid-up bonus certificates to and amongst such Certificate holders in the proportion aforesaid, or partly in one way and partly in the other, and the modaraba company shall give effect to such resolution.

(2) Whenever such a resolution as aforesaid shall have been passed the directors shall make all appropriations and application of the un-divided profits resolved to be capitalized thereby; and all allotments and issues of fully paid certificates, if any, and generally shall do all acts and things required to give effect thereto, with full powers to the directors to make such provisions to the issue of fractional certificates or by payment in cash or otherwise as they think fit for the case of certificates becoming distributable in fractions, and also to authorize any person to enter on behalf of all the Certificate holders entitled thereto into an agreement with the modaraba providing for the allotment to them respectively, credited as fully paid-up, of any further certificates to which they may be entitled upon such capitalization, or (as the case may require) for the application thereto of their respective proportional of the profits resolved to be capitalized, of the amounts or any part of the amounts remaining un-paid on their existing certificates and any agreement made under such authority shall be effective and binding on all such Certificate holders.

18. Distribution of profit and reserves. \_\_\_ (1) The distribution of profit shall include distribution in cash or issue of bonus certificates out of the capitalized profit or any other security.

(2) The Board of a modaraba company may from time to time distribute to the Certificate holders such interim profits as appear to the Board to be justified by the profits of the modaraba.

(3) No distribution shall be made otherwise than out of profits of the year or any other un-distributed profits or realized capital gains.

(4) The Board of a modaraba company may, before making any distribution of profits, set aside out of the profits of the modaraba such sums as it thinks proper as a reserve or reserves which shall, at the discretion of the Board, be applicable for meeting contingencies, or for equalizing distribution of profit, or for any other purpose to which the profits of the modaraba may be properly applied, and pending such application may, either be employed in the business of the modaraba or be invested in such investments (other than certificate of the modaraba) as the Board may from time to time think fit).

(5) If several persons are registered as joint-holders of any certificate any one of them may give effectual receipts for any profit payable on the certificates.

(6) Notice of any profit distribution that may have been declared shall be given by post to the Certificate holder at his registered address or, if he has no registered address in Pakistan, to the address, if any, within Pakistan supplied by him to the modaraba company for giving notice to him.

(7) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

(8) If a Certificate holder has no registered address in Pakistan, and has not supplied to the company an address within Pakistan for the giving of notices to him, a notice addressed to him or to the Certificate holders generally and advertised in a newspaper circulating in the neighborhood of the registered office of the company shall be deemed to be duly given to him on the day on which the advertisement appears.

(9) The final distribution of the profit in respect of any accounting period shall be made within six weeks after re-opening of the register of Certificate holders.

19. Appointment and removal of auditors. (1) Every modaraba company shall, state in the prospectus the name and the address of the auditor of the modaraba duly approved by the Registrar, who shall not be the auditor of the modaraba company.

(2) The terms of the appointment of auditor shall be renewed every year with the approval of the Registrar.

(3) If the modaraba company wishes to appoint an auditor other than the existing auditor for the next accounting period, it shall inform the existing auditor in writing giving reasons for such change, with a copy to the Registrar.

(4) The Registrar may, if he so desires, seek such information as he may consider necessary either from the modaraba company or from the auditor or from both and on being so desired the parties concerned shall provide the Registrar with the required information.

(5) The auditor on his own accord shall be entitled to make such submissions in connection with the proposed change to the Registrar as he may like.

(6) The Registrar's decision on the proposed change of auditor shall be final.

(7) An auditor may resign from his appointment with the approval of the Registrar obtained in writing.

20. Prospectus.\_\_\_\_ (1) Every prospectus issued by a modaraba company in respect of any modaraba shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus.

(2) A copy of the every such prospectus, signed by every person who is named therein as a director or proposed director of the modaraba company, or by his agent authorized in writing, shall be filed for registration with the Registrar on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so filed for registration.

(3) The Registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in the manner required by this rule.

(4) Every prospectus shall state on the face of it that a copy has been filed for registration as required by this rule.

(5) If a prospectus is issued without a copy thereof being so filed, the modaraba company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine as laid down in section 32.

(6) Every prospectus of a modaraba must state the matters specified in Part I of the Fourth Schedule and set out the reports specified in Part II of that schedule and the said parts I and II shall have effect subject to the provisions contained in part III of that Schedule.

*\*\*[20.A\_\_ (1) Power to increase modaraba Fund. \_\_\_ (1) A Modaraba company may, under the authority of a resolution passed at a meeting of its directors and with the approval of the Registrar, alter the prospectus of a modaraba floated by it so as to increase the Modaraba Fund by issue of new modaraba certificates subject to such conditions as may be imposed by the Registrar:*

*Provided that, before according his approval, the Registrar shall, at the expense of the modaraba, issue a notice of the proposed increase and conditions attaching thereto for eliciting opinion of the modaraba certificate holders and others concerned within a period of not less than fourteen days from the date of publication in at least one issue each of a daily newspaper in English language and a daily newspaper in Urdu language having circulation in the Province in which the stock exchange on which the modaraba is listed is situate or, if the modaraba is not listed, in the Province in which the registered office of the modaraba company is situate.*

*(2) Except to the extent otherwise specified by the Registrar for reasons to be recorded, the new modaraba certificates shall rank pari passu with the existing certificates in all matters including the right to such bonus or right issue and dividend as may be declared subsequent to the date of issue of such new certificates.*

*(3) The modaraba company shall file with the Registrar a notice of exercise of any power referred to in sub-rule (1) and pay fees as specified for authorization to float modaraba on the additional amount of modaraba fund increased in the manner laid down in sub-rule (1), within fifteen days from the exercise thereof indicating the conditions attaching thereto and shall also issue a notice thereof in newspapers in the manner laid down in Proviso to sub-rule (1)].*

**\*\*Rule 20A inserted by SRO 231(I)/87 dated March 26, 1987.**

**\*\*[ 20B.\_\_\_\_\_Further issue of Modaraba Certificates. \_\_\_ (1) Where the modaraba company decides to increase the modaraba fund of a modaraba by the issue of new modaraba certificates, such certificates shall subject to the conditions imposed by the Registrar, be offered to the existing certificate holders in proportion to the existing certificates held by them, and such offer shall be made by notice specifying the number of certificates to which the certificate holder is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined.**

(2) *The offer of new modaraba certificates shall be accompanied by a circular duly signed by the directors of the modaraba company or an officer of the company authorized by them in this behalf in the form prescribed by the Registrar containing material information about the affairs and accounts of the modaraba and setting forth the necessity for raising of further funds with business prospects.*

(3) *A copy of the circular referred to in sub-rule (2) signed in the manner specified therein shall be filed with the Registrar before it is sent to the modaraba certificate holders.*

(4) *If, in any case, the whole or any part of the issue of certificates so offered is declined or is not subscribed, the modaraba company may offer the unsubscribed part in such manner as may be approved by the Registrar.*

(5) *Where the new modaraba certificates forming part of the Modaraba Fund are to be issued to the public, a prospectus shall be issued which shall comply, in all respects, with the requirements applicable to a prospectus and be subject to the liabilities specified in the Ordinance and the rules therefore.]*

21. **Invalidity of certain conditions as to waiver of notice. \_\_\_ (1) Any condition requiring or binding any applicant for certificates to waive compliance with any requirements of the Fourth Schedule or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.**

(2) **It shall not be lawful to issue any form of application for the certificates of modaraba different in text from the one forming part of the Fourth Schedule:**

**Provided that this sub-rule shall not apply if it is shown that the form of application was issued either;**

- (a) **in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the certificates ; or**
- (b) **in relation to certificates which were not offered to the public.**

22. **Register of certificate holders.\_\_\_\_ (1) Every modaraba company shall maintain a register of “Certificate holders” in the manner required in respect of register of shareholders under the Companies Act, 1913.**

(2) **The following provisions shall apply to the registration of the transfer of a Modaraba Certificate, namely:-**

**\*\* Rule 20B inserted by SRO 231(I)/87 dated March 26, 1987.**

- (a) an application for the registration of the transfer of certificates in a modaraba may be made either by the transferor or the transferee, and the modaraba company shall enter in its register of Certificate holders the name of the transferee in the same manner and subject to the same conditions as if the application for registration was made by the transferee:

Provided that, where such application is made by the transferor, no Registration shall be made if objection is taken by the transferee within two weeks from the date of receipt of a notice of such application issued to him by the modaraba company;

- (b) for the purposes of clause (a) notice to the transferee shall be deemed to have been duly given if dispatched by prepaid post to the transferee at the address given in the instrument of transfer and shall be deemed to have been delivered in the ordinary course of post;
  - (c) it shall not be lawful for the modaraba company to register a transfer of certificate of the modaraba unless the proper instrument of transfer duly stamped and executed by the transferor and the transferee has been delivered to the modaraba company along with the relative modaraba certificate provided that, where it is proved to the satisfaction of the directors of the modaraba company that an instrument of transfer signed by the transferor and transferee has been lost, the modaraba company may, if its directors think fit, on an application in writing made by the transferee and bearing the stamp required for an instrument of transfer, register the transfer with notice to the transferor on such terms as to indemnity as the directors of the modaraba company may think fit;
  - (d) if a modaraba company refuses to register the transfer of any certificate, the modaraba company shall, within two months from the date on which the instrument of transfer was lodged with the modaraba company, send to the transferee and the transferor or notice of the refusal indicating reason for such refusal.
- (3) The following provisions shall apply to succession to a certificate in the case of death of the holder, namely :-
- (a) the legal heirs of a deceased Certificate holder, according to Shariat shall be the only persons to be recognized by the modaraba company as having any title to his certificates;
  - (b) any person becoming entitled to a certificate in consequence of the death of the Certificate holder may be registered as a Certificate holder on producing such evidence as may be required by the modaraba company;
  - (c) any person who becomes entitled to a certificate in consequence of the death of the holder may, instead of being registered as the holder himself, elect to have some other person to be named by him registered as a transferee of such certificate;

- (d) the person electing to have some other person registered as a holder in accordance with the above provision shall testify to such election by executing an instrument of transfer in favour of his nominee;
- (e) such instrument of transfer shall be presented to the modaraba company together with such other evidence as the directors of the company may require to prove the title of the transferee, and thereupon the transferee shall be registered as a holder.

23. Annual list of Certificate holders and summary. \_\_\_ (1) Every modaraba shall within eighteen months from its flotation, and thereafter once at least in every year, make a list of all persons who, on the date of the re-opening of the register of certificate holders relative to declaration of final dividend or, where there is no such date in any particular year as, on 31st December of the year, are Certificate holders and of all persons who have ceased to be Certificate holders since the date of the last return or in the case of the first return since the floatation of the modaraba.

(2) The list shall state the names, addresses, and occupations of all the past and present Certificate holders therein mentioned, and the number of certificates held by each of the existing Certificate holders at the date of the return, specifying certificates transferred since the date of the last return, or in case of the first return, of the floatation the modaraba by persons who are still members and persons who have ceased to be Certificate holders respectively and the dates of registration of the transfers, and shall contain a summary distinguishing between certificates issued for cash and certificates issued as fully or partly paid up as bonus certificates or issued as fully or partly paid certificates otherwise than in cash, and specifying the following particulars, namely :-

- (a) the amount of the certificates of the modaraba and the number of certificates into which it is divided;
- (b) the number of certificates taken from the commencement of the modaraba up to the date of the return;
- (c) the amount called up on each certificates;
- (d) the total amount of calls received;
- (e) the total amount of calls un-paid;
- (f) the total amount of the sums (if any) paid by way of commission in respect of any certificates or allowed by way of discount in respect of any certificates since the date of the last return or so much thereof as has not been written off at the date of the return;
- (g) the names and addresses of the persons who at the date of the return are the directors of the modaraba company and of the persons (if any) who at the said date are the managers or officers of the modaraba company, and the changes in the personnel of the directors, managers and officers of the modaraba company, and the changes in

the personnel of the directors, managers and since the last return together with dates on which they took place; and

- (h) the total amount of debt due from the modaraba in respect of all mortgages and charges which are required to be registered with the Registrar under these rules.

(3) The above list and summary shall be contained in a separate part of the register of Certificate holders and shall be completed within thirty days from the date referred to in sub-rule (1) and the modaraba company shall forthwith file with the Registrar a copy signed by a director or by the manager or secretary of the modaraba company, together with a certificate from the such director, manager or secretary that the list and summary state the facts as they stood on the day aforesaid.

24. Inspection of register of certificate holders.\_\_\_\_ (1) The register of Certificate holders and the index thereof shall at all times be kept at the registered office of the modaraba company, and, except when closed under the provisions of this rule, shall during business hours be open, subject to such reasonable restrictions as the modaraba company may lay down in the prospectus, for inspection by any Certificate holder, or any other person on payment of five rupee, or such less sum as the modaraba company may require, for each inspection and for making extract there-from.

(2) Any Certificate holder or other person may require a copy of the register, or of any part thereof, or of the list and summary required by these rules, or any part thereof, on payment of one rupee for every hundred words or fractional part thereof required to be copied and the modaraba company shall cause any copy so required by any person to be sent to that person within a period of ten days, exclusive of non-working days and days on which the transfer books of the modaraba are closed, commencing on the day next after the day on which the requirement is received by the modaraba company unless the person concerned asks for receiving personal delivery at a later date.

(3) If any inspection required under this rule is refused or if any copy required under this rule is not sent or delivered within the period specified under sub-rule (2), Registrar may, without prejudice to any penalty to which the company or any director or any officer thereof may be liable under the Ordinance, on a representation, be and order compel an immediate inspection of the register and the index or direct that copies required thereof shall be sent to the persons requiring them.

25. Power to close register.\_\_\_\_ A modaraba company may, on giving seven day's previous notice by advertisement in some newspapers circulating in the province in which the registered office of the modaraba company is situate, close the register of Certificate holders for any time or times not exceeding in the whole forty-five days in each year and not exceeding fifteen days at any one time.

26. Return as to allotment. \_\_\_\_ (1) Whenever a modaraba company floats any modaraba and makes any allotment of its certificates, the modaraba company shall, within one month thereafter:-

- (a) file with the Registrar a return of the allotments, stating the number and nominal amount of the certificates comprised in the allotment, the names and address of the allottees and the amount paid if any due or payable on each certificate; and

- (b) in the case of a certificate allotted as fully or partly paid up otherwise than in cash, produce for the inspection and examination of the Registrar a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration for which the allotment was made, such contracts being duly stamped, and file with the Registrar verified copies of all such contracts and a return stating the number and nominal amount of certificates so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2) Where such a contract as is referred to in sub-rule (1) is not reduced to writing, the modaraba company shall, within one month after the allotment, file with the Registrar the required particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and these particulars shall be deemed to be an instrument within the meaning of the Stamp Act, 1899, and the Registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section 31 of that Act.

(3) If the Registrar is satisfied that in the circumstances of any particular case the period of one month specified in sub-rules (1) and (2) for compliance with the requirements of those sub-rules is inadequate, he may extend that period as he thinks fit, and in that event, the provisions of sub-rules (1) and (2) shall have effect in that particular case as if for the said period of one month the extended period allowed by the Registrar were substituted:

Provided that in case of default in filing with the Registrar within the time specified in sub-rules (1) and (2) any document required to be filed by this rule, the modaraba company, or any person liable for the default, may apply to the Federal Government for relief, and the Federal Government, if satisfied that the omission to file the document was accidental or due to inadvertence or that on other grounds it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such a period as the Federal Government may think proper.

27. Certain mortgages and charges to be void if not registered.\_\_\_\_ (1) Every mortgage or charge created by a modaraba and being either:-

- (a) a mortgage or charge for the purpose of securing any issue of Participation Term Certificate (PTC); or
- (b) a mortgage or charge on any immovable property wherever situate or any interest therein ; or
- (c) a mortgage or charge on any book debts of the modaraba; or
- (d) a mortgage of a charge, not being a pledge, on any movable property of the modaraba except stock-in-trade ; or
- (e) a floating charge on the undertaking or property of the modaraba;

shall, so far as any security on the modaraba property or undertaking is thereby conferred, be void against the liquidator and any creditor of the modaraba, unless the required particulars of the mortgage or charge, together with the instrument, if any, by which the mortgage or charge is created or evidenced, or a verified copy thereof, are filed with the Registrar for registration in the manner required by these rules within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and on a mortgage or charge thus becoming void under this rule, the money secured thereby shall immediately become payable:

Provided that:-

- (i) in the case of a mortgage or charge created out of Pakistan comprising solely property situate outside Pakistan twenty-one days after the date on which the instrument or copy could, in due course of post, and if dispatched with due diligence, have been received in Pakistan shall be substituted for twenty-one days after the date of the creation of the mortgage or charge, as the time within which the particulars and instrument or copy are to be filed with the Registrar, and
- (ii) where the mortgage or charge is created in Pakistan but comprises property outside Pakistan, the instrument creating or purporting to create the mortgage or charge or a copy thereof verified in the required manner may be filed for registration notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country in which the property is situate; and
- (iii) where a negotiable instrument has been given to secure the payment of any book debts of a modaraba, the deposit of the instrument for the purpose of securing an advance to the modaraba shall not for the purpose of this rule be treated as a mortgage or charge on those book debts; and
- (iv) the holding of PTC entitling the holder to a charge on immovable property shall not be deemed to be an interest in immovable property.

(2) Where any mortgage or charge on any property or a company required to be registered under sub-rule (1) has been so registered, any person acquiring such property or any part thereof, or any share or interest therein, shall be deemed to have notice of the said mortgage or charge as from the date of such registration.

28. Registration of charge on properties. \_\_\_\_ Whenever the modaraba acquires any property which is subject to a charge of any such kind as would, if it had been created by the modaraba after the acquisition of the property, have been required to be registered under these rules, the modaraba shall cause the required particulars of the charge, together with certified copy of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the Registrar for registration in the manner required by these rules within twenty-one days after the date on which the acquisition is completed :

Provided that, if the property is situated and the charge was created outside Pakistan, twenty-one days after the date on which the copy of the instrument could in due course of post, and if dispatched with due diligence, have been received in Pakistan shall be substituted for twenty-one

days after the completion of the acquisition as the time within which the particulars and the copy of the instruments are to be delivered to the Registrar.

29. Prosecution of delinquent directors of modaraba company. \_\_\_\_ (1) If it appears to the Tribunal in the course of a winding up that any past or present director, manager or other officer of the modaraba company, or any member of the modaraba company has been guilty of any offence in relation to the modaraba for which he is criminally liable, the Tribunal may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator either himself to prosecute the offender or to refer the matter to the Registrar.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager or other officer of the modaraba company or any member of the modaraba company has been guilty of any offence in relation to the modaraba or modaraba company for which he is criminally liable, he shall forthwith report the matter to the Registrar and shall furnish to him such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator relating to the matter in question, as he may require.

(3) Where any report is made under sub-rule (2) to the Registrar, he may, if he thinks fit, cause an enquiry to be conducted in the matter.

(4) If on any report to the Registrar under sub-rule (2) it appears to him that the case is not one in which proceedings ought to be taken by him, he shall inform the liquidator accordingly, and thereupon, the liquidator may himself take proceedings against the offender.

(5) If it appears to the Tribunal in the course of winding up that any past or present director, manager or other officer of modaraba company, or any member of the modaraba company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Registrar, the Tribunal may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly the provisions of this rule shall have effect as though the report had been made in pursuance of the provisions of sub-rule (2)

(6) If, where any matter is reported or referred to the Registrar under this rule, he considers that the case is one in which a prosecution ought to be initiated he shall take action accordingly:

Provided that no prosecution shall be initiated without first giving the accused person an opportunity of making a statement in writing to the Registrar and of being heard.

(7) When any proceedings are instituted under this rule it shall be the duty of the liquidator and every officer and agent of the modaraba company past and present (other than the defendant in the proceedings) to give all assistance in connection with the prosecution which he is reasonably able to give, and for the purposes of this sub-rule the expression "agent" in relation to a modaraba company shall be deemed to include any banker or legal adviser of the company and any person employed by the modaraba or modaraba company as auditor, whether that person is or is not an officer of the company.

(8) If any person fails or neglects to give assistance in the manner required by sub-rule (7), the Tribunal may, on the application of the Registrar, direct that person to comply with the requirements of the said sub-rule, and where any such application is made with respect to a liquidator, the Tribunal may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

30. Responsibility for fraudulent trading of persons concerned. \_\_\_ If in the course of winding up or enquiry of a modaraba it appears that any business of the modaraba has been carried on with intent to defraud creditors or Certificate holders of the modaraba or for any fraudulent purpose, the Tribunal on the application of the Registrar or the liquidator or any creditor, may, if it thinks proper so to do, declare that any persons who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability for all or any of the debts or other liabilities of the modaraba as the Tribunal may direct.

31. Loan or contribution to associated undertakings, etc. prohibited. \_\_\_ No. loan or contribution shall be made by the modaraba to any of the associated undertakings of the modaraba companies or political parties or other organization of political nature.

32. Advisory Committee. \_\_\_ (1) The Federal Government may, for the purpose of obtaining advice and assistance in carrying out the purposes of the Ordinance and the rule, constitute an Advisory Committee.

(2) The Committee shall consist of:

- (a) a Chairman to be nominated by the Federal Government;
- (b) the Registrar;
- (c) a nominee of the Institute of Chartered Accountants of Pakistan;
- (d) the President of the Federation of Pakistan Chambers of Commerce and Industry;
- (e) the President of the Karachi or Lahore Stock Exchanges, as the Federal Government may specify;
- (f) the Managing Director of Bankers Equity Limited or National Investment (Unit) Trust or of the Investment Corporation of Pakistan as the Federal Government may specify; and
- (g) not more than five other persons to be appointed by the Federal Government.

(3) The persons referred to in clauses (e) and (f) of sub-rule (2) shall be appointed on the basis of rotation.

(4) Unless the Federal Government otherwise directs, the Chairman and a member of the Committee shall hold office for a period of three years and shall be eligible for re-appointment.

H.U. BEG,  
Secretary.

**THE FIRST SCHEDULE**

**FORM No.1**

*(Section 8)*

[ See Rule 3(2) (d) ]

To

The Registrar  
Modaraba Companies & Modarabas  
**Corporate Law Authority**  
Government of Pakistan  
Islamabad.

Dear Sir,

We \_\_\_\_\_ being a duly registered Modaraba Company, registered vide Registration No. \_\_\_\_\_ dated \_\_\_\_\_ hereby apply for the grant of permission to float a \_\_\_\_\_ modaraba to be called \_\_\_\_\_ under section 8 of the Modaraba Companies and Modarabas (Floatation and Control) Ordinance, 1980 (XXXI of 1980), and submit herewith:

- (1) 5 duly certified copies of the Registration Certificate as a Modaraba Company one copy thereof being certified by the Registrar.
- (2) 5 copies of the prospectus duly signed by all directors.
- (3) 5 copies each of the latest Audited Balance Sheet and Profit & Loss Account of Modaraba Company and existing Modarabas.
- (4) Necessary information required in the annexure to this form.
- (5) A receipt for Rs. \_\_\_\_\_ deposited in \_\_\_\_\_ on \_\_\_\_\_ on account of fee for authorization to float Modaraba.

We confirm that there has been no change in our Memorandum and Articles of Association or statute except to the extent indicated below (specify) since last submitted on \_\_\_\_\_ together with Form-I.

We undertake:

- (i) to keep the information up to date.
- (ii) to take all steps necessary for floatation and carrying out the functions of the modaraba.

We solemnly affirm and declare that the information contained in the prospectus and all other documents filed herewith is correct and that nothing has been concealed.

Yours faithfully,

**ANNEX TO FORM No.1**

(See Section 8)

[ See rule 3 (2) (d)]

1. Name, address and telephone No. of applicant company.
2. No. and date of registration as a Modaraba Company.
3. Name and type of Modaraba, indicating exact purpose or objective and duration.
4. Description of business operations to be undertaken, organizational set up, plans and prospects of the proposed modaraba with feasibility or viability reports, duly supported by evidence.
5. Details showing how the business and operations shall be conducted spelling out how the operations will not be opposed to the tenets of Islam and mode of distribution of profit.
6. Amount of modaraba to be floated, division thereof and condition attached thereto if there be any.
7. Form of modaraba certificate in Form No. XII.
8. Amount to be subscribed by modaraba company in the proposed modaraba supported by evidence that the modaraba company has the ability to meet the commitment.
9. Amount to be set aside for the modaraba management indicating the manner in which it is to be kept.
10. Particulars of application for floatation of modaraba submitted in the past, if any, with decision thereon along with particulars of existing modaraba under the management of the modaraba company or associated undertakings.

Verification and signatures  
of all directors

Dated:

**FORM NO. II**  
[See rule 3 (2) (d)]  
**CERTIFICATE**  
(See Section 10)

Issued under section 10 of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980).

We, the undersigned members of the Religious Board constituted under the provision of section 9 of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980) hereby certify that the business proposed to be undertaken by the modaraba as per draft prospectus submitted to us is not opposed to the injunctions of Islam.

Issued under our signatures and seal  
this \_\_\_\_\_ day of \_\_\_\_\_ 200  
Signed

Chairman

Member

Member

**FORM No. III**  
(See Section 11)  
[See rule 3 (2)(e)]

Certified that having considered the application for permission to float modaraba under section 8 of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 by \_\_\_\_\_ and having received the requisite certificate from the Religious Board, and being satisfied that it would be in the public interest so to do, I, in exercise of the powers conferred under section 11 of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980, do hereby grant authorization to \_\_\_\_\_ to float the modaraba subject to conditions stated therein below or that may be prescribed or imposed from time to time.

Issued under my signatures and seal

This \_\_\_\_ day of \_\_\_\_\_ 200

**Conditions:**

1. The modaraba shall be floated within twelve months from the date of this authorization.
2. The modaraba shall not undertake any business other than those specified in the prospectus.
3. The modaraba company shall not disinvest or create encumbrance in favour of any person any part of the investment in the modaraba.
4. The modaraba certificates shall be listed for trading in Stock Exchange.
5. Other conditions.

**FORM NO.IV**  
[See rule 3 (2) (g)]

**CERTIFICATE OF MINIMUM SUBSCRIPTION**

Certified:-

- (i) \_\_\_\_\_ has issued a prospectus in terms of rule 20 (6) of the Modaraba Companies and Modaraba Rules 1981.
- (ii) the amount of modaraba offered for subscription is Rs. \_\_\_\_\_
- (iii) the amount of Rs. \_\_\_\_\_ stated in the prospectus as the minimum amount which should be raised by the issue of modaraba certificates to commence business has been raised, the amount actually raised as per declaration filed under rule 3(2) (g) being Rs. \_\_\_\_\_

Issued under my signature and seal  
This \_\_\_\_\_ day of \_\_\_\_\_ 200

*Registrar of Modaraba  
Companies and Modarabas*

**FORM No. V**

[See rule 3 (2) (g)]

**DECLARATION BEFORE COMMENCING BUSINESS IN CASE OF A MODARABA  
ISSUING A PROSPECTUS**

**THE MODARABA COMPANIES AND MODARABA (FLOATATION AND CONTROL)  
ORDINANCE, 1980**

[ See Section 13 (2) ]

Filing fee Rs. 3/-

Name of Modaraba Company \_\_\_\_\_

Name of Modaraba \_\_\_\_\_

Declaration that the conditions of section 13 (2) of the Ordinance have been complied with.

Presented for filing by \_\_\_\_\_

I, \_\_\_\_\_ S/o \_\_\_\_\_

of \_\_\_\_\_ address \_\_\_\_\_

being the Chief Executive of the \_\_\_\_\_

Modaraba Company do solemnly and sincerely declare :-

That the minimum amount stated in the prospectus to be amount which must be raised in order to provide for the business operation and expenses is Rs. \_\_\_\_\_.

That modaraba certificate subject to the payment of the whole amount thereof in cash have been allotted to the amount of Rs. \_\_\_\_\_ being not less than the minimum amount referred to above.

That the modaraba company has subscribed for modaraba certificates of the nominal value of and paid in cash Rs. \_\_\_\_\_ and that the certificates of that value have been duly allotted.

I declare that the foregoing statements are true to the best of my knowledge and belief.

[ Note: This declaration should be accompanied by bank certificates of the amount deposited and kept under section 13 (2)]

Signature

Dated \_\_\_\_\_

(CHIEF EXECUTIVE)

**FORM NO. VI**

[See rule 3(5)]

**ACKNOWLEDGEMENT OF FILING**

No.

Islamabad, the

In the office of the Registrar Modaraba Companies and Modaraba.

In the matter of \_\_\_\_\_

\_\_\_\_\_

Certified that the under mentioned document(s) has/have this day been filed/registered/recorded, pursuant to the provisions of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980.

Registrar of the Modaraba  
Companies and Modaraba  
Or  
Other authorized officer

Fee Rs. \_\_\_\_\_

**FORM NO. VII**

[See rule 3(8)]

**REGISTER OF MODARABA COMPANIES**

1. Name of modaraba company.
2. Company's certificate of incorporation No., date and place of issue.
3. Modaraba company registration No. and date.
4. Classification and business.
5. Whether private/public limited company by share.
6. Address of the registered office.
7. Share capital (authorized, issued, subscribed and paid up) with division thereof.

**PARTICULARS OF DOCUMENTS FILED**

Sl. No. of document filed	Description of documents	Date of filing or recording	Initials of Registrar or other authorized officer	Remarks as to any action required or taken
1	2	3	4	5

Particulars of modaraba

Name of modaraba

No. and date of authorization

**FORM NO. VIII**

[See rule 3(8)]

**REGISTRER OF MODARABA**

1. Name of modaraba.
2. Type of modaraba.
3. No. and date of authorization certificate.
4. Classification and business.
5. Name and address of modaraba company.
6. Amount of modaraba certificates and division thereof.
7. Date of issue of prospectus.
8. No. and date of certificate of allotment of minimum subscription.

**PARTICULARS OF DOCUMENTS FILED**

S. No. of document filed	Description of documents	Date of filing or recording	Initials of Registrar or other authorized officer	Remarks as to any action taken etc.
1	2	3	4	5

**FORM-IX**

[See rule 4(1)]

**APPLICATION FOR REGISTRATION OF MODARABA COMPANY**

Dated \_\_\_\_\_

To

The Registrar Modaraba Companies and Modarabas,  
Corporate Law Authority,  
Government of Pakistan,  
Islamabad.

Dear Sir,

We hereby apply for registration under section 6 of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 as a modaraba company.

We are registered by the name of \_\_\_\_\_ as a public/private Company under the Companies Act 1913/a body corporate formed under \_\_\_\_\_ and owned or controlled by the Government of \_\_\_\_\_.

A receipt of Rs. \_\_\_\_\_, being the registration fee, deposited in \_\_\_\_\_ on \_\_\_\_\_ is enclosed.

Information and documents as required in the Annexure to this form duly verified and signed by all directors alongwith five spare copies of this application and an affidavit as to the correctness of the details by the Chief Executive and two directors are furnished herewith. We undertake to keep this information up to date by communicating changes/modifications therein within fourteen days of such changes/modifications.

We further undertake that no change in the Memorandum and Articles of Association nor any change in the majority share-holders and directors shall be made without prior written authorization of the Registrar and that we shall comply with all requirements of law and conditions of registration.

We being authorized by the directors solemnly declare and affirm that to that best of our knowledge and belief the information contained in this application and the documents accompanying it are true and correct and that the requirements of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 and rules framed thereunder in respect of all matters precedent to the registration of the said -----as a modaraba company or incidental thereto have been duly complied with.

Yours faithfully,

Verification by  
Oath Commissioner

\_\_\_\_\_

\_\_\_\_\_

## ANNEX T FORM No. IX

[See rule 4(1)]

### I. Particulars of the Modaraba Company.

1. Name of the company/body corporate.
2. Public/Private/body corporate indicating how formed.
3. Date and place of registration.
4. Address of registered office and other offices, Telephone Nos., Telegraphic addresses and Telex Number.
5. Authorized, Subscribed and Paid-up Capital.
6. Details of persons or group controlling the company including of those holding more than 10% shares with the number and value of shares held.
7. Names of any holding, subsidiary and associated undertakings.
8. Description and place of the business operations and undertakings.  
(Information about objects stated in the Memorandum and Articles of Association not required.)

### II. Particulars of Directors and Officers:

1. Full names, any former names, Father's/Husband's name, nationality full residential and business addresses and details of other directorships and occupations of all directors and officers including Chief Executive and Chairman of the Board indicating their respective designation and name of firms in which any one is a partner.
2. Names of companies, firms or organizations of which the aforesaid directors and officers have been directors, managers, officers, employees or partners in the past.
3. Financial standing, professional qualifications and experience of persons mentioned in (1) above, supported by documentary evidence.
4. Whether any aforesaid person has ever been convicted of fraud or breach of trust or of an offence involving moral turpitude or removed from service. If so, full particulars thereof.
5. Whether any person referred to in (1) above or any company or firm in which he has been associated in the past has been adjudicated an insolvent or has suspended payment or defaulted in making payments or has compounded with his or their creditor or gone into liquidation. If so, full particulars thereof.
6. Shareholding or other investment of each of the person referred to in (1) above in the company.

[Note: There should be furnished a separate declaration in respect of each person as referred to above.]

**ANNEX TO FORM No. IX (Continued)**

[ See rule 4(1)]

Verified that the information given above and in the accompanying documents are true and correct to the best of our knowledge and belief and that nothing has been concealed.

Dated \_\_\_\_\_ 200

All Directors

Following certified documents should be appended:-

1. Memorandum and Articles of Association or other documents under which formed, one copy of which should be certified by the Registrar of Joint Stock Companies.
2. Certificate of Incorporation one copy of which should be certified by the Registrar of Joint Stock Companies.
3. Last three year's audited Balance Sheet and Profit and Loss Account together with related documents, certified by the company's auditors.

**FORM No. X**

[ See rule 4(4)]

Serial Number \_\_\_\_\_

OFFICE OF THE .....

**REGISTRATION CERTIFICATE**

(See Section 4 and 6)

Certified that having considered the application for registration under section 6 of the Ordinance made by \_\_\_\_\_ and being satisfied that the said \_\_\_\_\_ is eligible for registration and further being satisfied that it would be in the public interest so to do, I, in exercise of the powers, conferred under section 6 of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980, do hereby grant registration to \_\_\_\_\_ subject to the fulfillment of the conditions stated herein below or that may be prescribed or imposed hereafter from time to time.

Issued under my signatures and seal

This \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_

Conditions:

- (j) The company shall make such investment as it may be required in terms of the prospectus for floatation of a modaraba.
- (ii) Subscription in compliance to section 17(3) of the Ordinance will be in the nature of permanent investment of the Modaraba Company in the Modaraba free from encumbrances for all time which will not be disinvested during the life of the Modaraba.
- (iii) The Company shall undertake such business as is approved by the Registrar in terms of the prospectus.
- (iv) The promoters, sponsors or persons holding controlling interest shall not transfer any shares held by them without the prior permission in writing of the Registrar.
- (v) Other conditions.

**FORM No. XI**

[See rule 9 (3)]

**\*\*[AUDITORS' REPORT TO THE CERTIFICATE HOLDERS**

*We have audited the annexed balance sheet of ..... modaraba as at..... and the related profit and loss account, cash flow statement and statement of changes in equity together with the notes forming part thereof (hereinafter referred to as the financial statements), for the year then ended and we state that we have obtained all the information and explanations which, to the best of our knowledge and belief, were necessary for the purposes of our audit.*

*These financial statements are the modaraba company's (name of the modaraba company to be indicated) responsibility who is also responsible to establish and maintain a system of internal control, and prepare and present the above said statements in conformity with the approved accounting standards as applicable in Pakistan and the requirements of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980), and the Modaraba Companies and Modaraba Rules, 1981. Our responsibility is to express an opinion on these statements based on our audit.*

*We conducted our audit in accordance with the auditing standards as applicable in Pakistan. These standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of any material misstatement. An audit includes examining on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting policies and significant estimates made by the modaraba company, as well as, evaluating the overall presentation of the financial statements. We believe that our audit provides a reasonable basis for our opinion and, after due verification, we report that –*

- (a) in our opinion, proper books of accounts have been kept by the modaraba company in respect of ..... modaraba as required by the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980), and the Modaraba Companies and Modaraba Rules, 1981;*
- (b) in our opinion:*
  - (i) the balance sheet and profit and loss account together with the notes thereon have been drawn up in conformity with the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980) and the Modaraba Companies and Modaraba Rules, 1981, and are in agreement with the books of accounts and are further in agreement with accounting policies consistently applied \*1 except for the changes as stated in note(s) ..... With which we concur;*

- (ii) *the expenditure incurred during the year was for the purpose of the modaraba's business; and*
- (iii) *the business conducted, investments made and the expenditure incurred during the year were in accordance with the objects, terms and conditions of the modaraba;*
- (c) *in our opinion and to the best of our information and according to the explanations given to us, the balance sheet, profit and loss account, cash flow statement and statement of changes in equity together with the notes forming part thereof conform with approved accounting standards as applicable in Pakistan, and, give the information required by the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980), and the Modaraba Companies and Modaraba Rules, 1981, in the manner so required and respectively give a true and fair view of the state of the modaraba company's affairs as at ..... and of the profit or loss, its cash flows and changes in equity for the year then ended; and*
- (d) *in our opinion, \*2 Zakat deductible at source under the Zakat and Ushr Ordinance, 1980 (XVIII of 1980), was deducted by the modaraba company and deposited in the Central Zakat Fund established under section 7 of that Ordinance.*

*Signature  
(Name(s) of Auditors)*

*Date \_\_\_\_\_*

*Place \_\_\_\_\_*

#### NOTES

*Where applicable –*

*\*1. Where there is no change in the accounting policy (ies) the portion “except fro the changes as stated in note(s)..... with which we concur” may be omitted.*

*\*2. Where no Zakat is deductible, substitute “no Zakat was deductible at source under Zakart and Ushr Ordinance, 1980”.*

*Where any of the matter referred to in the auditors' report is answered in the negative or with a qualification, the report shall state the reason for such answers along with the factual position to the best of the auditor's information.*

**\*\*Form XI of the First Schedule substituted vide SRO 471(10/2003, dated June 4, 2003.**

**FORM No. XII**

(See rule 14)

\_\_\_\_\_ Modaraba

Pattern of holdings of the certificates by the certificate-holders as at \_\_\_\_\_19 \_\_

Number of Certificate Holders	Certificate Holders	Total Certificates Held
From 1	to 50	Certificates
From 51	to 100	“
From 101	to 500	“
From 501	to 1000	“
From 1001	to 5000	“
From 5001	to 10000	“
From 10001	to above	“

Categories of certificate Holders	Number	Certificates Held	%
Individuals			
Investment Companies			
Insurance Companies			
Joint Stock Companies			
Financial Institutions			
Modaraba Company			
Others to be specified)			

**‘THE SECOND SCHEDULE’\*\***

[ See rule 3 (18) ]

Scale of Fees

**[1. For registration of a modaraba company (non-refundable fee):			
(i) at the time of registration.	Rs.250,000/-		
(ii) renewal annually in the month of January.	Rs.25,000/-		
2. Application for:	<u>Perpetual</u>	<u>More than five years</u>	<u>Up to five years</u>
(a) authorization to float modaraba (non-refundable fee):	(1)	(2)	(3)
Where the nominal amount does not exceed Rs.2.5 million	Rs.50,000/-	Rs.40,000/-	Rs.30,000/-
Where the nominal amount exceeds Rs.2.5 million but does not exceed Rs. 5 million	Rs.100,000/-	Rs.60,000/-	Rs.40,000/-
Where the nominal amount exceeds Rs.5 million	Rs.100,000/- plus Rs.10,000/- for every additional Rs.1 million.	Rs.60,000/- plus Rs.6,000/- for every additional Rs. 1 million.	Rs.40,000/- plus Rs.4,000/- for every additional Rs. 1 million
(b) renewal annually in the month of January (to be charged to the Modaraba)	Rs. 100,000/-		
3. For filing, recording or registering any fact or document or fact required to be filed with, recorded by or registered with Registrar.	Rs.1,000/- for each document		
4. For filing, registering and recording document relating to a mortgage or charge required under the Ordinance.	Rs.7,500/-		
5. For application for enquiry.	Rs.2,000/-		
6. For claim against modaraba company by modaraba certificate holders referred to the Tribunal.	Rs.2,000/-		
7. For any other application before the Tribunal, other than an application by Registrar, or before the Registrar by any person.	Rs.2,000/-		
8. For inspection of records.	Rs.200/-		
9. For certified copy of any document or extract thereof.	At the rate of Rs.20/- per page or part thereof subject to a minimum of Rs.100/- .]		

\*\**(Amended vide notification No. S.R.O. 826(I)/2010, dated 21.08.2010*

## THE THIRD SCHEDULE

[ See rule 9 (2) ]

### GENERAL PROVISIONS AS TO BALANCE SHEET AND PROFIT AND LOSS ACCOUNT

#### Requirements as to Balance Sheet

The assets and liabilities shall be classified under the headings appropriate to the modarabas business, distinguishing as regards assets between fixed assets, long-term repayments, and deferred costs, investments, loans and advances and current assets, and as regards liabilities between capital and reserves, Participation Term Certificates (PTC), long-term loans and deferred liabilities, and current liabilities and provisions.

#### 2. Fixed assets.

(A) Fixed assets shall be distinguished between tangible and intangible and shall be classified under appropriate sub-heads, duly itemized such as :

(i) Tangible :

- (a) land (distinguishing between free-hold and leasehold);
- (b) buildings (distinguishing between buildings on free-hold land and those on lease-hold land);
- (c) plant and machinery;
- (d) furniture and fittings;
- (e) vehicles;
- (f) capital work in progress; and
- (g) others

(ii) Intangible:

- (a) good-will;
- (b) patents trade marks and designs; and
- (c) others.

(B) Under each sub-head, other than capital work in progress, the original cost, and the additions thereto and deductions, therefrom since the date of the previous balance sheet shall be stated and the aggregate amount written off, or provided or retained, up to the date of the balance sheet, by way of provision for depreciation or amortization or diminution in value shall be shown as deduction therefrom

(C) In case of revaluation:

- (a) In the year of valuation the basis of revaluation and by whom revalued e.g. independent professionals or modaraba company management and particulars of persons or persons by whom revalued should be additionally disclosed (in the later year, the basis of revaluation).

- (b) In the account for the period subsequent to the period of valuation, disclosure be restricted to total amount of revaluation, year of revaluation and the revaluation element included in the book value.

3. Long-Term prepayments and deferred costs:

(A) Long-term prepayments and deferred costs shall include prepayments for services or benefits to be received after twelve months from the date of the balance sheet. Any material items shall be stated separately together with the basis on which each item is being amortized or written off, and in respect of each item of deferred costs the reasons for carrying forward such costs shall be stated. Such deferred costs should be written off during a period of five years or less.

(B) Preliminary expenses, discount allowed on the issue of certificates, if any, and expenses incurred on the issue of certificates including any sums paid by way of commission or brokerage on the issue of certificates, to the extent not written off or adjusted; shall be treated as deferred costs and shown separately under each head.

4. Investment, loans and advances:

(A) There shall be shown under separate sub-heads the aggregate amount respectively of the modaraba's:

- (i) investments in and loans and advances to controlled firms and other associated undertakings;
- (ii) investments in other quoted companies and modarabas;
- (iii) investment in other unquoted companies and modarabas other than investment in subsidiary companies;
- (iv) investments in immovable properties;
- (v) investments in PTC; and
- (vi) other investments, loans and advances.

(B) There shall be stated under sub-head 4 (A) (i) the names of the modarabas, controlled firms and other associated undertakings and the nature and extent of the investment made and loans and advances given in each case, showing separately, in the case of each associated undertaking, shares of different classes and of different paid-up values, PTCs and in the case of each controlled firm, the amount invested as capital and the amounts of loans and advances. In the case of loans and advances, the nature of collateral security shall be stated.

(C) There shall be stated under sub-head 4(A) (ii) the names of the companies and modarabas (in every case with the name of the modaraba company), in whose shares or certificates, investments have been made and the nature and extent of the investment made in each case, showing separately, shares of different classes and of different paid up values.

(D) There shall be stated under sub-head 4 (A) (iii) the names of the unquoted companies and modarabas (in every case with the name of the modaraba company) in whose shares or certificates, investments have been made and the nature and extent of the investment made in each case, showing separately, shares of different classes and of different paid-up values. Value of investment

in shares of unquoted companies and modarabas calculated by reference to net assets of the investee unquoted companies and modaraba on the basis of the latest available audited accounts (the period of which to be indicated) of such companies or modaraba and the names of their auditors to be disclosed

(E) The mode of valuation of investments, e.g. cost of market value, shall be stated separately and, if investments in quoted companies and modarabas are valued otherwise than at market value, the aggregate amount of the market value thereof shall be shown.

(F) Loans and advances due for payment after a period of twelve months from the date of the balance sheet shall be shown under this head.

(G) The following particulars shall be stated separately by way of a note in respect of sub-head 4 (A) (vi):

- (a) aggregate amount due by the officers and employees of the modaraba and any of them severally or jointly with any other person; and
- (b) aggregate amount due by associated undertakings.

(H) Percentage of the equity held by the modaraba in an investee company or modaraba where it exceeds 10% of the investee's total equity shall be disclosed by way of a note.

## 5. Current Assets:

(A) Current assets shall be classified under sub-heads appropriate to the modarabas business including, where applicable, the following:

- (i) stores and spare parts;
- (ii) loose tools;
- (iii) Stock-in-trade, distinguishing, where practicable, between;
  - (a) stock of raw material and components;
  - (b) work in progress;
  - (c) stock of finished products; and
  - (d) other stock
- (iv) trade debtors, which shall include amounts due in respect of goods sold or services rendered or in respect of other contracted obligations but shall not include the amounts which are in the nature of loans or advances. Debts considered good and debts considered doubtful or bad shall be separately stated. Debts considered good shall be distinguished between those which are secured and those for which the company holds no security other than the debtor's personal security;
- (v) loans and advances due for repayment within a period of twelve months from the date of the balance sheet, showing separately the amounts due from subsidiaries, controlled firms and other associated undertakings and also the amounts lent out to employees of the modaraba. Loans and advances considered good and loans and advances, considered doubtful or bad shall be separately stated;

- (vi) trade deposits and short term prepayments for which services or benefits are to be received within twelve months from the date of the balance sheet and current account balances with statutory authorities;
- (vii) bills receivable;
- (viii) balance on current account with the officers and employees of the modaraba, the maximum amount held by any of them at any time since the date of incorporation or since the date of the previous balance sheet whichever is the later, being stated by way of a note. Such maximum amounts to be calculated by reference to month-end balance.
- (ix) Tax refunds due from Government, showing separately excise duties customs duties, sales taxes etc; and
- (x) Cash and bank balances, distinguishing between:
  - (a) amount in hand;
  - (b) amount in transit; and
  - (c) balance with banks showing nature of balance e.g. current, deposit etc.

(B) In the case of sub-heads 5 (A) (i), (ii) and (iii), the respective basis of valuation shall be stated. If the basis such as “cost”, “net realizable value” or “cost or net realizable value, whichever is lower” is given, there shall also be given, to the extent practicable, a general indication of the method of determining the “cost or net realizable value”, e.g., “average cost”, “first-in, first-out”, or “last-in, first-out”.

(C) In respect of each of the sub-heads 5 (A) (iv) and (v), the following particulars shall be stated separately :-

- (a) aggregate amount due by officers and employees of modaraba and any of them severally or jointly with any other person.
- (b) Aggregate amount due by associated undertakings;
- (c) Maximum amount of debts, under each of the preceding items (a) and (b), at any time, since the date of floatation or since the date of the previous balance sheet, whichever is the later (by way of a note). Such maximum amount to be calculated by reference to month-end balance.

6. Assets in respect of which different methods or bases of valuation or of provisions for depreciation or diminution in value are used shall be regarded as assets of different classes.

## 7. Capital and Reserves:

(A) Capital and reserves shall be classified under the following sub-heads:

(i) reserves, distinguishing between capital reserves and revenue reserves. Capital reserves shall include certificate premium account, surplus on revaluation of fixed assets, profit prior to certificate floatation or on re-issue of forfeited certificates or any reserve not available for distribution by way of revenue profit (to be specified), while revenue reserves shall include general reserve, profit distribution equalization reserve, other reserves, created out of profit (to be specified), and unappropriated profits i.e., credit balance of profit and loss account after appropriations for the period to the date of balance sheet. Addition to and deductions from each item of reserves shall be shown in the balance sheet under the respective items unless they are

disclosed in the profit and loss account or a statement or a report annexed thereto. Only revaluation element included in the book value of the fixed assets at the balance sheet date be treated as capital reserves.

(B) There shall be shown in the balance sheet:

- (i) authorized amount of certificates;
- (ii) issued amount of certificates and the amount called up;
- (iii) called up value of certificates and the amount called up;
- (iv) call un-paid as a deduction from called up value of certificates, distinguishing calls un-paid by:

- (a) modaraba company, its directors and officers and employees;
- (b) officers and employees of the modaraba; and
- (c) others.

(v) paid-up certificates, distinguishing between:

- (a) certificates allotted for consideration paid in cash;
- (b) certificates allotted for consideration other than cash; and
- (c) bonus certificates stating the number and value.

(vi) The number, description and amount of any certificate in the modaraba which any person has an option to subscribe for, together with the following particulars of the option, that is to say :-

- (a) the period during which it is exercisable;
- (b) the price to be paid for certificates subscribed for under it.

(C) Where circumstances permit, authorized, issued, subscribed, called up and paid up value of certificates may be shown as one item.

(D) The word “fund” in relation to any “reserve” shall be used only where such a reserve is represented by specifically earmarked investments or other assets realizable as and when required at not less than the amount of the reserve fund.

## 8. Participation Term Certificates (PTC)

(A) The rate of profit and terms of redemption or conversion, if any, of the Participation Term Certificates issued shall be stated together with the earlier date on which they may be redeemed or converted into certificates and it shall also be stated if any sinking fund arrangement exists.

(B) There shall be stated, by way of a note or otherwise, particulars of any redeemed PTC which the modaraba has power to re-issue.

(C) Where any of the modaraba’s PTC are held by a nominee of, or a trustee for the modaraba, the amount thereof, calculated on the same basis as the total amount standing in the balance sheet in

respect of the PTC of that class, shall unless and until the PTC so held and re-issued or cancelled, be shown as deduction from the total by way of a note.

#### 9. Long-Term Profit and Loss Sharing Loans (PLS) and Deferred Liabilities:

(A) Long term loans and deferred liabilities shall mean loans and liabilities which become due for payment after twelve months from the date of the balance sheet. Deferred liabilities shall include such other liabilities as are under recognized accounting principles appropriately so classified e.g. deferred liability for taxation and customers' deposits. Every material item shall be stated separately.

Balance due to "workers participation fund" and "provident fund" payable within twelve months from the date of balance sheet should be classified as current liability.

(B) Long-term (PLS) loans shall be classified as secured and un-secured, and under each class shall be shown separately.

- (i) PLS loans from banking companies and other financial institutions;
- (ii) PLS loans from subsidiary companies, controlled firms and other associated undertaking;
- (iii) PLS loans from modaraba company, its directors (including Chief Executive) officers and employees; and
- (iv) Other PLS loans.

(C) Where any of the long-term loans or any other deferred liabilities are secured otherwise than by the operation of law on any assets of the modaraba, the fact that the liabilities are so secured shall be stated, together with a statement of the assets upon which they are secured, and, where more than one class of liabilities is so secured, their relative priorities with respect of payment of profit and redemption.

#### 10. Current Liabilities:

(A) Current liabilities shall mean liabilities due and payable (other than liabilities the payment of which may, at the modaraba's option, be postponed) within twelve months from the date of the balance sheet, together with such other liabilities as are under recognized accounting principles appropriately so classified.

(B) Current liabilities and provisions shall, so far as they are appropriate to the modaraba's business, be classified under the following sub-heads:-

- (i) Short-term PLS loans, distinguishing between secured and un-secured and between PLS loans taken from-
  - (a) banking companies and other financial institutions;
  - (b) subsidiary companies controlled firms and other associated undertakings;
  - (c) directors including Chief Executive, officers and employees of modaraba and modaraba company.

- (ii) installments of long-term debt due;
- (iii) others;
- (iv) deposits;
- (v) creditors;
- (vi) accrued expenses;
- (vii) bills payable;
- (viii) advance payments and un-expired discounts for the portion for which value is still to be given, e.g., in the case of newspapers, clubs and steamship companies;
- (ix) profit accrued on PTC;
- (x) other liabilities, if any (to be specified e.g. unclaimed profit distribution; unpaid profit distribution);
- (xi) provision for taxation, showing separately excise duties, customs duties, sales tax, income tax etc;
- (xii) proposed profit distribution; and
- (xiii) other provision, if any (to be specified).

(C) Where any short-term loans (PLS) or any other liabilities of the modaraba are secured otherwise than by the operation of law on any assets of the modaraba, the fact that the liabilities are so secured shall be stated, together with a statement of the assets upon which they are secured, and where more than one class of liabilities is so secured, their relative priorities with respect to payment of profit and redemption.

11. No liability shall stand in the balance sheet at a value less than the amount at which it is repayable (unless the quantum of repayment is at the option of the modaraba) at the date of the balance sheet or, if is not then repayable, at the amount at which it will first become so repayable thereafter, less, where appropriate, a reasonable deduction for discount until that date.

12. The matter referred to in the following sub-paragraphs shall be stated by way of note, or in a statement or report annexed, if not otherwise shown.

- (i) Particulars of any charge on the assets of the modaraba to secure the liabilities of any other person, including, where practicable, the amount secured.
- (ii) The general nature of any claim not acknowledged as debt and other contingent liabilities not provided for and, where practicable, the aggregate amount or estimated amount of those liabilities, if it is material.
- (iii) Where practicable the aggregate amount or estimated amount, if it is material, of contracts for capital expenditure, so far as not provided for.
- (iv) If in the opinion of the directors of modaraba company any of the current assets have not a value, on realization in the ordinary course of the modaraba's business, at least equal to the amount at which they are stated, the fact that they are of that opinion.
- (v) The basis on which foreign currencies have been converted into rupees, where the amount of the assets or liabilities affected is material.

(vi) The basis on which the amount, if any, set aside for Pakistan income tax is computed.

(vii) Except in the case of the first balance sheet, the corresponding amounts at the end of the immediately preceding financial year for all items shown in the balance sheet. This requirement shall, in the case of modaraba preparing quarterly or half-yearly accounts, relate to the balance sheet as on the last day of the period which ended on the corresponding date of the immediately preceding year.

(viii) Other sums for which the modaraba is contingently liable. The aggregate amount of any guarantees given by the modaraba on behalf of the managers or other officers of the modaraba or any of them severally or jointly with any other person shall be stated separately, and, where practicable, the general nature and amount of each such contingent liability, if material, shall also be specified;

(ix) Where determinable, the capacity of the industrial unit, actual production and the reasons for shortfall, if any, except in a case where the registrar upon an application agrees that such information need not be disclosed in the public interest.

(w) The general nature of any credit facilities available to the modaraba under any contract, other than trade credit available in the ordinary course of business, and not availed of at the date of the balance sheet.

13. Where there has been any change in the basis of accounting e.g. change in the mode of valuation of the stock-in-trade, change in the method of charging depreciation, such changes, together with the effects thereof, if material, shall be stated by way of a note. The auditor will state in his report whether or not he concurs with the change.

14. Where any item shown in the balance sheet or included in amount shown therein cannot be determined with substantial accuracy an estimated amount described as such shall be included in respect of that item together with the description of the item.

15. No provision with respect to the information to be given in the balance sheet shall be deemed to require the amount of any item that is of no material significance to be given separately.

16. Any information required to be given in respect of any of the items in the balance sheet shall, if it cannot be included in the balance sheet itself, be furnished in a separate schedule or note or schedules or notes to be attached to, and to form part of the balance sheet.

17. The figures may be rounded off to the nearest thousand of rupees.

## **PART II**

### **REQUIREMENT AS TO PROFIT AND LOSS ACCOUNT.**

1. The profit and loss account shall be so made out as to disclose clearly the result of the working of the modaraba during the period covered by the account and shall show, arranged under the most convenient heads, the gross income and the gross expenditure of the modaraba during the period, disclosing every material feature and in particular the following-

- (A) (i) the turnover, that is, the aggregate amount for which sales are effected by the modaraba, and the gross income derived from rendering, giving or supplying services or benefits, and showing as deduction therefrom.
  - (a) commission paid to selling agents; and
  - (b) brokerage and discount on sales, other than the usual trade discount;
- (ii) income from investments, showing separately income from each subsidiary company from each controlled firm, from each associated undertaking and from other investments;
- (iii) income arising from PTC;
- (iv) profit on sale of investment;
- (v) profit on sale of fixed assets;
- (vi) profit in respect of transactions of an exceptional or non-recurring nature, not usually undertaken by the modaraba or not envisaged in the normal nature of business; and
- (vii) other income, showing separately every material item and the nature of each such item.
- (B) (i) the value of stock-in-trade, including raw materials and components, work in progress and finished products, as at the commencement and the value at the end of the period;
- (ii) purchase of raw materials and components and finished products;
- (C) (i) stores and spare parts consumed;
- (ii) fuel and power;
- (iii) salaries and wages including bonus, contributions to provident and other funds, and expenses on staff welfare, distinguishing between manufacturing salaries and wages, if any, and other salaries and also showing by way of a note the amount included in salaries and wages in respect of persons who are officers and employees of the modaraba;
- (iv) rent, municipal rates and provincial and local taxes (excluding the taxes on income, capital gains and wealth);

- (v) insurance;
  - (vi) repairs and maintenance (being repairs to and maintenance of the modaraba's fixed assets); and
  - (vii) patents, copyrights, trade marks, designs, royalties and technical assistance;
- (D) The aggregate amount of auditor's remuneration, whether fees, expenses or otherwise, for services rendered as auditors or in any other capacity, showing separately the remuneration for services rendered as auditors and the remuneration for services rendered in any other capacity and stating broadly the nature of such other services.
- (E) Other expenses, showing separately every item of an exceptional or non-recurring nature and every material item;
- (F) The amount provided for depreciation, renewal or diminution in value of fixed assets. The value of the assets by various groups, the additions or depletions thereto, the rate at which depreciation is charged, shall be shown separately. Where such provision is not made by means of a charge for depreciation, the method adopted for making such provision shall be stated. If no provision for depreciation is made during the period, the fact that no provision has been made and the reasons for not making it shall be stated and the amount which should have been provided and the quantum of arrears of depreciation, if any, shall be disclosed.
- (G) (i) the amount of profit/loss on borrowings, showing separately the amount on long-term loans (PLS) and on short-term loans (PLS) and showing by way of a note the amount of profit/loss on borrowings from the modaraba company its directors and others;
- (ii) loss on sale of investments;
  - (iii) loss on sale of fixed assets;
  - (iv) debts written off as irrecoverable;
  - (v) provision for doubtful or bad debts;
  - (vi) provision for diminution in value of investments;
  - (vii) provision for taxation on income, capital gains and other tax or taxes; showing separately the provision for liability in respect of the profit of the period and the provision for liability deferred due to timing difference including the difference between the rates of depreciation allowed for purposes of taxation in income and those adopted by the company for the charge to profit and loss account and distinguishing, where applicable, between the provision for Pakistan taxation and the provision for taxation elsewhere. Where the provision for taxation in respect of the profits of the period is reduced by the writing back of a part or the whole of the provision for differed liability made in previous periods the amount written back shall be shown as deduction from the gross charge for taxation; and

- (viii) other provisions for meeting specific liabilities, contingencies or commitments;
- (H) (i) the amount of profit payable to the PTC holders;
- (ii) the amount of profit payable to the modaraba company as their remuneration;
- (iii) the amount set aside or proposed to be set aside as reserves, showing separately the respective amounts in respect of each item of reserves; and
- (iv) the amount of proposed profit distribution to certificate holders;

2. There shall be stated by way of a note the respective amounts included in items (G) (iv) and (v) of paragraph 1 of this Part for (a) debts due by the officers and employees and others of the modaraba and any of them severally or jointly with any other person, (b) debts due by associated undertakings.

3. The following shall be stated by way of a note:-

(i) the aggregate amounts paid during the period to or in respect of or provided during the period for payment to or in respect of officers and the employees by the modaraba as fees, remuneration, allowances, commission, perquisites or benefits or in any other form or manner and for any services rendered, and shall give full particulars of such aggregate amounts, separately for officers and employees under appropriate heads such as:-

- (a) fees;
- (b) managerial remuneration;
- (c) remuneration or commission based on net profit or turnover;
- (d) reimbursable expenses;
- (e) pensions; gratuities; modarabas; contribution to provident, superannuation and other staff funds, compensation for loss of office and in connection with retirement from office;
- (f) buying commission;
- (g) selling agency commission, showing separately the amount provided for or paid to an associated undertaking or to an associated person or of a director or officer of the modaraba company or the modaraba or any of their partners;
- (h) other allowances, and commission, including commission for guarantee, specifying the nature of the allowances and commission and the respective amounts;
- (i) other perquisites and benefits in cash or in kind stating their nature and, where practicable, their approximate money values;
- (j) the amount of commission to an associated person of the modaraba company or, to an associated person of a partner or a director or officer of the modaraba company as selling or buying agents of other concerns in respect of contracts entered into by such concerns with the modaraba;
- (k) the calculation of the remuneration or commission based on net profits or turnover payable to the officers and employees of modaraba or any other person with relevant particulars; and

- (l) the amounts, if material, by which any items shown therein affected by any change in the basis of accounting. Auditor must state in his report as to whether he agrees with such change or not;
  - (m) any material respects in which any items shown in the profit and loss account are affected by transaction of a sort not usually undertaken by the modaraba or otherwise by circumstances of an exceptional or non-recurrent nature;
- (ii) in the case of a sale of an item of fixed assets otherwise than through a regular auction showing particulars of the original cost, accumulated depreciation charged thereon, the written down value, the sale price, the mode of disposal (e.g. by tender or negotiation); and the particulars of the purchaser, indicating whether such purchaser was a director or officer or employee of the modaraba company or a certificate holder owning, 20 per cent of the certificate of the modaraba.
  - (iii) the aggregate amounts of the purchases from the sales of goods, materials and services to the modaraba company, an associated undertaking of the Modaraba company or to an associated person of a director or officer of the Modaraba Company or of the Modaraba or any of their partners. The nature of transaction with the associated undertaking should be clearly stated.
4. A Modaraba need not shown the amount set aside as provisions other than those relating to depreciation, renewal or diminution in value of assets, if, on application made by it, it has been allowed by the registrar to do so on being satisfied that the disclosure of such information would be prejudicial to the amount of such provision as to indicate that it has been so allowed by the registrar.
5. The profit and loss account shall be so drawn up as to disclose separately manufacturing, trading and operational results. In the case of a manufacturing concern, the cost of goods manufactured shall also be shown. Where the modaraba has more than one unit of operation or line of business the working results of each such unit or line of business should be separately given.
6. Except in the case of the first profit and loss account the corresponding amounts for the immediately preceding financial year for all items shown in the profit and loss account. In the case of modaraba preparing quarterly or half-yearly accounts, relate to the profit and loss account for the period which ended on the corresponding date of the immediately preceding year.
7. The information required to be given in respect of any of the items in profit and loss account shall, if it cannot be included in the profit and loss account itself, be furnished in a separate schedule or note or schedules or notes to be attached and to form part of the profit and loss account.
8. The figures may be rounded off to the nearest thousand of rupees.

## PART III

## INTERPRETATION OF SCHEDULE

1. For the purpose of this schedule unless the context otherwise requires:-
  - (a) the expression “associated undertakings” means any two or more undertakings interconnected with each other in the following manner, namely :-
    - (i) if a person who is the owner or a partner, officer or director of an undertaking or who directly or indirectly holds or controls shares, carrying not less than twenty per cent of the voting power in such undertaking, is also the owner or a partner, officer or director of another undertaking or directly or indirectly, holds or controls shares carrying not less than 20 percent of the voting power in that undertaking; or
    - (ii) if the undertakings are under common management or common control or one is the subsidiary of another; and the shares of an issuer shall be deemed to be owned, held or controlled by a person if they are owned, held or controlled by that person or by the spouse, brother or sister or any lineal ascendant or descendant of that person and the person who is the owner or a partner, officer or director of, or directly or indirectly holds or controls shares carrying not less than twenty per cent of the voting power in an undertaking shall be deemed to be an “associated person” of the person who is the owner or a partner, officer or director of, or directly or indirectly holds or controls shares carrying not less than twenty per cent of the voting power in, another undertaking which is an associated undertaking of that undertaking:

Provided that the modaraba company and modaraba under its management shall be deemed to be an undertaking and common director shall by virtue of their nomination or common shareholding or certificate holding by the financial institutions owned/or controlled by the Federal Government or Provincial Government will not constitute “associated undertaking” as defined in the aforesaid sub-rule;
  - (b) the expression “debts” , shall include loans and advances and other receivables where it relates to amounts written off and provision for doubtful and bad debts;
  - (c) the expression “liability” shall include all liabilities in respect of expenditure contracted for and all disputed or contingent liabilities.
  - (d) the expression “manufacturing salaries and wages” shall mean those direct and administrative salaries and wages which under recognized accounting principles are so classified.
  - (e) the expression “provision” shall subject to paragraph 2 of this Part mean any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets, or retained by way or providing for any known liability of which the amount cannot be determined with substantial accuracy;
  - (f) the expression “reserve” shall not, a subject to foresaid include any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability;

2. Any amount retained by way of providing for any known liability, is in excess of the amount which, in the opinion of the directors of the modaraba company, is reasonably necessary for the purpose, the excess shall be treated for the purposes of this schedule.

3. A firm shall be deemed to be controlled by a company if the latter controls the firm's management or is entitled to more than fifty percent of its profits or is liable to bear more than fifty percent of its losses.

# THE FOURTH SCHEDULE

[ See rule 20 (6)]

## PROSPECTUS

Presented pursuant to section 8 of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980. (Ordinance No XXXI of 1980),

### **Matters to be specified in Prospectus and Reports to be set out therein.**

#### **PART I**

#### **MATTERS TO BE SPECIFIED**

1. The name of Modaraba.
2. Principal place of business and branches, if any.
3. The name of the modaraba company and the address of its registered office.
4. The names, occupations, other directorship and addresses of the directors of the modaraba company.
5. Description of the business of modaraba company.
6. Type of Modaraba i.e. ;
  - (a) Multipurpose modaraba or Specified purpose modaraba.
  - (b) Modaraba for a definite time or modaraba for an indefinite time.
7. Description of business to be undertaken by the modaraba and its prospects.
8.
  - (a) Amount of the modaraba;
  - (b) Divided into \_\_\_\_\_ Modaraba Certificates of Rs. \_\_\_\_\_ each to be issued at Rs. \_\_\_\_\_ each.
  - (c) Details of calls to be made, if applicable.
9. Mode of distribution of profits.
10. The amount to be subscribed by the modaraba company its directors and officers in their own name.
11. Name and address of the underwriters, if any, giving salient features of the agreement and the opinion of the Board of Directors of the modaraba company that the resources of the underwriters are sufficient to discharge their obligations.
12. The form of Modaraba Certificate.
13. The names and addresses of the auditors of the modaraba and that of modaraba company.
14. Particulars as to:-
  - (a) the minimum amount which in the opinion of the directors of the modaraba company must be raised by the issue of modaraba certificates in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters:

- (i) the purchase price of any property purchased or 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) the repayment of any moneys borrowed by the modaraba company in respect of any of the foregoing matters;
  - (iv) working Capital; and
  - (v) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.
15. The date and time of the opening and closing of the subscription lists.
16. The amount payable on application and allotment on each certificate and in the case of a second or subsequent offer of certificates, the amount offered for subscription on each previous allotment made within the two preceding years, the amount actually allotted, if any, paid on the certificates so allotted.
17. The number, description and amount of any certificate in the modaraba which any person has, or is entitled to be given, an option to subscribe for, together with the following particulars of the option, that is to say-
- (a) the period during which it is exercisable;
  - (b) the price to be paid for certificates subscribed for under it;
  - (c) the consideration (if any) given or to be given for it or for the right to it;
  - (d) the names and addresses of the persons to whom it or the right to it was given.
18. The number and amount of certificates which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those certificates have been issued or are proposed or intended to be issued.
19. (1) As respects any property to which this paragraph applies-
- (a) the names and addresses of the vendors;
  - (b) the amount payable in cash or certificates to the vendor and, where there is more than one separate vendor, or the modaraba is a sub-purchaser, the amount so payable to each vendor;
  - (c) short particulars of any transaction relating to the property completed within the two preceding years in which any vendor of the property to the

modaraba or any person who is, or was at the time of the transaction, a promoter or a director or proposed director of the modaraba company had any interest direct or indirect.

(2) The property to which this paragraph applies is property purchased or acquired by the modaraba or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus or the purchase or acquisition of which has not been completed at the date of the issue of the prospectus, other than property-

- (a) the contract for the purchase or acquisition whereof was entered into in the ordinary course of the modaraba business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract; or
- (b) as respects which the amount of the purchase money is not material.

20. The amount, if any, paid or payable as purchase money in cash or certificates for any property to which the last foregoing paragraph applies, specifying the amount if any payable for goodwill.

21. The amount if any, paid within the two preceding years, or payable as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any certificates of the modaraba, and the rate of any such commission.

22. The amount or estimated amount of preliminary expenses and the persons by whom any of those expenses have been paid or are payable, and the amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses have been paid or are payable.

23. Any amount or benefit paid or given within the two preceding years or intended to be paid or given to the modaraba company and the consideration for the payment or the giving of the benefit.

24. The dates of, parties to and general nature of every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the modaraba or a contract entered into more than two years before the date of issue of the prospectus.

25. Full particulars of the nature and extent of the interest, if any, of modaraba company and its directors and offices in the promoting, or in the property proposed to be acquired by, the modaraba, or, where the interests of such a director or officer of the modaraba company consists in being partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or certificates or otherwise by any person either for services rendered by him or by the firm in connection with the promotion for formation of the modaraba.

26. In the case of a modaraba which has been carrying on business, or of a business which has been carried on for less than three years, the length of time during which the business of the modaraba or the business to be acquired, as the case may be, has been carried on.

## PART-II

### REPORT TO BE SET OUT

27.(1) A report by the auditors of the modaraba with respect to :-

- (a) profits and losses and assets and liabilities, in accordance with sub-paragraph (2) or (3) of this paragraph, as the case requires; and
- (b) the rates of the distribution of profit including bonus certificates, if any, paid by the modaraba in respect of each of the five financial years immediately preceding the issue of the prospectus, giving particulars of distribution of profits, and, if no accounts have been made up in respect of any part of the period of five 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-

- (a) so far as regards profits and losses, deal with the profits or losses of the modaraba in respect of each of the five financial years immediately preceding the issue of the prospectus; and
- (b) so far as regards assets and liabilities, deal with the assets and liabilities of the modaraba at the last date of which the accounts of the modaraba were made up.

(3) If the modaraba has subsidiaries, the report shall—

- (a) so far as regards profits and losses, deal separately with the modaraba's profits or losses as provided by the last foregoing sub-paragraph, and in addition, deal either-
  - (h) as a whole with the combined profits or losses of each subsidiary, so far as they concern certificate holders of modaraba; or
  - (ii) individually with the profits or losses of each subsidiary, so far as they concern certificate holders of the modaraba or, instead of dealing separately with the modaraba's profits or losses, deal as a whole with the profits or losses of the modaraba and, so far as they concern certificate holders of the modaraba with the combined profits or losses of its subsidiaries; and
- (b) so far as regards assets and liabilities, deal separately with the modaraba's assets and liabilities as provided by the last foregoing sub-paragraph and, in addition, deal either-
  - (i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the modaraba's assets and liabilities; or

- (ii) individually with the assets and liabilities of each subsidiary; and shall indicate as respects the assets and liabilities of the subsidiaries the allowance to be made for persons other than certificate holders of the modaraba.

28. If the proceeds, or any part of the proceeds, of the issue of the certificates are or is to be applied directly or indirectly in the purchase of any business, a report made by auditors (who shall be named in the prospectus) upon-

- (a) the profits or losses of the business in respect of each of the five financial years immediately preceding the issue of the prospectus; and
- (b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

29. (1) If-

- (a) the proceeds, or any part of the proceeds, of the issue of the certificates 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
- (b) 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-
  - (i) the profits or losses of the other body corporate in respect of each of the five financial years immediately preceding the issue of the prospectus; and
  - (ii) the asserts and liabilities of the other body corporate at the last date of which the accounts of the body corporate were made up.

(2) The said report shall indicate how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares or certificates to be acquired, have concerned certificate holders and what allowance would have fallen to be made in relation to assets and liabilities so dealt with, for holders of other shares, or certificates, if the modaraba had at all material times held the shares or certificates to be acquired.

### **PART-III**

#### **PROVISIONS APPLYING TO PARTS I AND II OF SCHEDULE**

30. Paragraphs 22 (so far as it relates to preliminary expenses) and 25 of this Schedule shall not apply in the case of a prospectus issued more than two years after the date at which the modaraba was floated.

31. Every person shall for the purposes of this Schedule, be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the modaraba in any case where-

- (a) the purchase money is not fully paid at the date of the issue of the prospectus;
- (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus;
- (c) the contract depends for its validity of fulfillment on the result of that issue.

32. Where any property to be acquired by the modaraba is to be taken on lease, this Schedule shall have effect as if the expression "Vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

33. Reference in paragraph 17 of this Schedule to subscribing for certificates shall include acquiring them from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.

34. For the purpose of paragraph 19 of this Schedule where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.

35. If in the case of a modaraba which has been carrying on business, or of a business which has been carried on for less than five years, the accounts of the modaraba or business have only been made up in respect of four years, three years, two years or one year, Part-II of this Schedule shall have effect as if reference to four years, three years, two years or one year, as the case may be, were substituted for references to five years.

36. The expression "financial year" in Part-II of this Schedule means the year in respect of which the accounts of the modaraba or of the business, as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the modaraba or business terminates the accounts of the modaraba or business have been made up for a period greater or less than a year that greater or less period shall for the purpose of that part of this Schedule be deemed to be a financial year.

37. Any report required by Part-II of this Schedule shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.

38. Any report by auditors required by Part-II of this Schedule shall be made by auditors qualified under the Ordinance and Rules for appointment as auditors of a modaraba and shall not be made by any auditors who is an officer or employee, or a partner of or in the employment of an officer or employee, of the modaraba or modaraba company.