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BILL

further to amend the Modaraba Companies and Modaraba (Floatation and Control)

Ordinance, 1980

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

It is hereby enacted as follows:—

1. Short title and commencement.—(1) This Act may be called the Modaraba Companies & Modaraba (Floatation and Control) Ordinance, (Amendment) Act, 2016.

(2) It shall come into force at once.

2. Amendment of section 2, Ordinance XXXI of 1980.—In the Modaraba Companies & Modaraba (Floatation and Control) Ordinance, hereinafter called the said Ordinance,—

(a) in section 2,-

(i) in sub-section (1),—

(I) for clause (a) the following shall be substituted, namely:-

“(aab) "Commission" means the Securities and Exchange Commission of Pakistan established under section 3 of the Act;”

(II) before clause (aab) inserted as aforesaid, the following new clauses shall be inserted, namely:-

“(a) "administrator" means a company, firm or any other person appointed by the Commission to manage the affairs of a modaraba, subject to such terms and conditions as deemed appropriate by the Commission;

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

(III) after clause (aab) inserted as aforesaid the following new clauses shall be inserted, namely:-

“(aac) “Court” means the Company Bench of a High Court as provided in section 7 and 8 of the Companies Ordinance, 1984 (XLVII of 1984);

(aad) "key executives” means key executives of the modaraba company, modaraba and includes, interalia, the persons, by whatever name called, discharging the following functional responsibilities,-

- (i) any executive or officer acting as second to chief executive officer including chief operating officer or by whatever name called;
- (ii) chief financial officer, head of accounts or head of finance;
- (iii) head of internal audit;
- (iv) head of information technology;
- (v) head of credit or risk management;
- (vi) head of human resource;
- (vii) head of operations;
- (viii) head of marketing/sales;
- (ix) head of research;
- (x) head of treasury or chief investment officer;
- (xi) head of law, company secretary or compliance officer;
- (xii) any other functional responsibility as the Commission deems appropriate;”;

(IV) for clause (c), the following shall be substituted, namely:—

“(c) "modaraba company" means a company registered under section 3 of this Ordinance;”

(V) for clause (f) the following shall be substituted, namely:-

“(f) “regulations” means the regulations made under this Ordinance;”

(VI) in clause (g) the word “and” at the end shall be omitted;
and

(VII) after clause (g) amended as aforesaid, the following new clause shall be inserted, namely:-

“(ga) “specified” means specified through regulations made by the Commission under this Ordinance; and”;

(b) in sub-section (2) for the expression “Companies Act, 1913 (VII of 1913” the expression “the Act and the Companies Ordinance 1984, (XLVII of 1984)” shall be substituted.

3. Omission of section 3, Ordinance XXXI of 1980.—In the said Ordinance, section 3 shall be omitted.

4. Substitution of section 4, Ordinance XXXI of 1980.—In the said Ordinance, for section 4, the following shall be substituted, namely:—

“4. No company to operate without registration.- No person shall undertake or assist in undertaking a business of modaraba or establish, operate, assist in establishing or hold himself out as a modaraba company,

unless registered with the Commission under section 6 and any violation of this section shall be an offence punishable under section 31 of this Ordinance.”.

5. Substitution of section 5, Ordinance XXXI of 1980.—In the said Ordinance, for section 5 the following shall be substitution, namely:-

“5. Eligibility for registration.- (1) Subject to section 4, a company shall be eligible for registration with the Commission if it fulfills the following conditions, namely:-

- (a) it is incorporated as a company under the Companies Ordinance 1984, (XLVII of 1984) or is a body corporate formed under any law for the time being in force and owned or controlled, whether directly or through a company or corporation, by the Federal Government or a Provincial Government;
- (b) it obtains no objection certificate from the Commission prior to incorporation under the Companies Ordinance 1984, (XLVII of 1984) and it has a paid up capital of not less than twenty five million rupees or such higher amount as notified by the Commission;
- (ba) its promoters, chief executive, directors, key executives shall fulfill the fit and proper criteria as may be specified;
- (c) that none of its directors, officers or employees has been convicted of fraud or breach of trust or of an offence

involving moral turpitude;

- (d) that none of its directors, officers or employees has been adjudged an insolvent or has suspended payment or has compounded with his creditors;
- (e) that its promoters are, in the opinion of the Commission, persons of means and integrity and have knowledge of matters which the company may have to deal with as a modaraba company;
- (f) that, being a company also engaged in business other than floatation and management of modaraba, it has a paid up capital of such amount and of such nature as may be prescribed;
- (g) any other condition as may be prescribed.

(2) No objection certificate referred to in clause (b) shall be valid only for the period of six months or for such further period as may be extended by the Commission through a notification.

(3) All existing companies operating as a modaraba company shall fulfill the above mentioned requirements within a period of six months from the date of coming into force of this provision.

(4) Any modaraba company registered after commencement of these amendments shall not carry out any business other than floatation and management of modaraba.

Provided that, the existing modaraba companies engaged in businesses other than floatation and management of modarabas shall comply with the above requirement within three years of coming into force of this Act.’’.

6. Amendment to section 6, Ordinance XXXI of 1980.—In the said Ordinance, in section 6,-

(a) in sub-section (1),-

(i) for the word “Registrar” the word “Commission” shall be substituted;

and

(ii) after the word “form and” the word “manner along” shall be inserted;

(b) after sub-section (1) amended as aforesaid, the following new sub-sections shall be inserted, namely:-

“(1A) The application under sub-section (1) shall be accompanied with such fee as may be specified.

(1B) The Commission may require an applicant to provide the Commission with such further information as it considers necessary in relation to the application, in such form and manner or verified in such manner as the Commission may direct.”;

(c) for sub-section (2), the following shall be substituted, namely:-

“The Commission, if satisfied after such enquiry and after obtaining such further information as it considers necessary that the applicant is eligible for registration and that it is in the public interest so to do, may grant registration to such company on such conditions as may deems fit.”;

(d) in sub-section (3),

(i) in clause (iii) the word “and” appearing at the end shall be omitted;

and

(ii) after clause (iv) the following new clauses shall be inserted,

namely:-

“(v) restriction on raising funds, in any form, from the general public; and

(vi) any other condition as may be specified.”.

7. Insertion of section 6A, Ordinance XXXI of 1980.— In the said Ordinance, after section 6 amended as aforesaid, the following new section shall be inserted, namely:-

“6A. Use of the word “Modaraba” or any of its derivatives.- (1) No person or entity other than a modaraba company registered under this ordinance shall use in its name the word ‘modaraba’ or any other similar expression in its name or having the object clause(s) to carry out the business of modaraba” or Musharakah or raise funds under modaraba or musharakah modes of financing or any other similar expression.

(2) Any person who contravenes sub-section (1) shall be punishable with imprisonment of either description which may extend to five years and shall also be liable to fine which may extend to one hundred million

rupees or both.

(3) Where, the contravention referred to in sub-section (1) has resulted in substantial loss to other person or resulted in pecuniary gain to the person who committed the offence under this section, shall be liable to a fine, in addition to punishment provided in sub-section (2), which may extend to one hundred million rupees or twice the amount of loss caused or gain made whichever is higher.

(4) For the purposes of sub-sections (1) and (2), the Commission suo moto or on receipt of any information or complaint may investigate the matter itself through its authorized officer or refer the matter for investigation, to any other investigation agency, bureau, etc.:

Provided that in case of reference under sub-section (4), the investigating agency may, in addition to offence under this section, also investigate any other violation of law under its statutory ambit and the person accused may be charged with, and tried at one trial for each of such offences accordingly.

(5) All local authorities, administration, police and other agencies shall be bound to ensure that no person or entity carries out any business in violation of sub section (1) and shall immediately inform the Commission to take cognizance of the matter and proceed in accordance with sub section (4).”.

8. Amendment of section 7, Ordinance XXXI of 1980.— In the said Ordinance, after sub-section (2) the following new sub-section shall be inserted, namely:-

“(3) The certificates of a modaraba shall be listed on the stock exchange.”.

9. Amendment of section 8, Ordinance XXXI of 1980.— In the said Ordinance,-

- (a) in sub-section (1),-
 - (i) for the word “section 4” the word “section 6” shall be substituted;
 - (ii) for the word “Registrar” the word “Commission” shall be substituted; and
 - (iii) for the expression “with such document” the word “manner” shall be substituted;
- (b) in sub-section (2),-
 - (i) for clause (ii) the following shall be substituted, namely:-
 - “(ii) the amount for which the modaraba is floated and the number of modaraba certificates of fixed denomination, into which this amount is divided;”;
 - and
 - (ii) in clause (vi) for the word “prescribed” the word “specified” shall be substituted.
- (c) in sub-section (3), after the word “the” appearing for the fourth time, the word “modaraba” shall be inserted; and
- (d) after sub-section (3) amended as aforesaid, the following new sub-sections shall be inserted, namely:-

“(4) Every modaraba company shall hold general meeting of the certificate holders of each modaraba managed by it in such manner as may be prescribed.

(5) A modaraba may issue short and long term sukuk and musharakah based term finance certificates, or such other instrument subject to terms and conditions as may be specified.”.

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

“8A. Further issue of modaraba fund.- (1) The directors of the modaraba company may increase the authorized or paid up fund of the modaraba by issue of further modaraba certificates in such form and manner and subject to such conditions as may be prescribed.

8B. Prohibition on invitation of funds or deposits.- (1) No modaraba shall be allowed to invite or accept any deposit.

(2) For the purpose of this section, the term “deposit” means any deposit of money with, or any money borrowed or raised by a modaraba but shall not include:

- (a) redeemable capital issued under section 120 of the Companies Ordinance 1984 (XLVII of 1984);
- (b) funds obtained from a financial institution;

- (c) advance, application or subscription money for certificates of the modaraba;
- (d) cash margin or security deposit received in respect of finance provided by the modaraba;
- (e) subordinated loans; and
- (f) funds obtained from major shareholders, sponsors and associated companies:

Provided that the Commission shall be the final authority to determine, by an order in writing, whether any money deposited, raised or borrowed falls under the definition of deposit or otherwise.

(3) The existing deposit raised by whatever name called by modarabas shall be repaid within a period of five years:

Provided that during the interim period of five years, the total deposit of modarabas shall be capped at the existing level i.e. the outstanding deposit at the date of coming into force of this provision and shall be repaid on their respected maturities.”.

11. Substitution of section 9, Ordinance XXXI of 1980.— In the said Ordinance, for section 9 the following heading and section shall be substituted, namely:-

“PART IV

SHARI'AH ADVISORY BOARD

9. Shari'ah Advisory Board.- (1) The Commission shall, constitute a shari'ah advisory board which shall consist of such members and shall perform such functions subject to such terms and conditions as may be prescribed.

(2) The Shari'ah Advisory Board constituted under sub-section (1), in addition to the duties and functions under this ordinance, shall provide advice to the Commission on the Shari'ah matters pertaining to the legislation administered by the Commission.”

12. Insertion of section 9A and 9B, Ordinance XXXI of 1980.— In the said Ordinance, after section 9 substituted as aforesaid, the following new sections shall be inserted, namely:-

“9A. Appointment of Shari'ah Advisor.- Subject to the provisions of this Ordinance, a modaraba company permitted to float modaraba under section 8 or managing a modaraba, shall appoint such shari'ah Advisor who meets the fit and proper criteria as may be specified.

9B. Shari'ah Advisor's report etc.- (1) The shari'ah advisor appointed under section 9A shall prepare a report regarding shari'ah compliance status of the affairs of modaraba for a financial year.

(2) The Shari'ah advisor's report shall be circulated to the modaraba certificate holders along with the annual audited accounts.

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

13. Substitution of section 10, Ordinance XXXI of 1980.— In the said Ordinance, for section 10, the following shall be substituted, namely:—

“10. Business of modaraba.— (1) No modaraba shall be a business which is opposed to the injunctions of Islam and the Commission shall not permit the floatation of modaraba unless the shari’ah advisory Board has certified in writing that the modaraba is not a business opposed to the injunctions of Islam.

(2) Modaraba company shall ensure that the business of the modaraba floated or managed by it is strictly in accordance with the prospectus approved by the shari’ah advisory board and meets the minimum shari’ah compliance requirements as may be specified.

(3) For the purpose of ensuring that the business to be undertaken by Modaraba is in line with the principles of Islamic shari’ah and for better regulation thereof, the Commission may specify regulations for the forms of the businesses prescribed in this Ordinance.”.

14. Substitution of section 11, Ordinance XXXI of 1980.— In the said Ordinance, for section 11, the following shall be substituted, namely:—

“11. Authorization.— (1) Subject to section 10, any modaraba company which seeks to undertake any business of modaraba shall make an

application to the Commission for authorization in such form and manner as may be specified.

(2) The Commission may, on being satisfied that it is in the public interest so to do, grant a certificate in such form and manner as may be prescribed, authorizing the floatation of modaraba on such terms and conditions as it may deem fit, including conditions as to the business to be undertaken, expenses relating to the management of the Modaraba Fund, preservation of assets and other matters relating to the mode of management and distribution of profits:

Provided that, before issuing the certificate of authorization, the Commission may require the modaraba company to make such modifications, additions or omissions in the prospectus as the shari'ah advisory board may have indicated or as it may deem fit.”.

15. Amendment of section 12, Ordinance XXXI of 1980.— In the said Ordinance, in section 12,-

- (a) in the heading, the words “be a legal person” shall be omitted; and
- (b) sub-section (2) shall be omitted.

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

- (a) before section 13 the following heading shall be inserted, namely:-

“PART V MODARABA”;

- (b) in the heading for the words “to modaraba” the words “for issuance of modaraba certificates” shall be substituted;
- (c) for the word “Registrar” wherever appearing the word “Commission” shall be substituted;
- (d) in sub-section (2), after the word “scheduled” the word “Islamic” shall be inserted; and
- (d) in sub-section (6), after the word “separate” the words “books of account” shall be inserted.

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

- (a) for the word “Registrar” wherever occurring, the word “Commission” shall be substituted; and
- (b) in sub-section (1),-
 - (i) for the word “six” the word “four” shall be substituted;
 - (ii) after clause (ii) the following new clause shall be inserted, namely:-

“(iia) a report by the shari’ah advisor;” and
 - (iii) in clause (iii) for the full stop at the end, full colon shall be substituted and thereafter the following proviso shall be inserted, namely:-

“Provided that, the Commission may, for reasons to be recorded in writing, extend the time period mentioned in sub-section (1) upon an application made to him by the modaraba company for a term not exceeding thirty days.”.

18. Amendment to section 15, Ordinance XXXI of 1980.- In the said Ordinance, in section 15, in sub-section (1),-

- (a) for the expression “Registrar” the words “Commission from the panel of auditors approved by the Commission” shall be substituted; and
- (b) for the expression “Companies Act, 1913 (VII of 1913)” the expression “Companies Ordinance 1984, (XLVII of 1984)” shall be substituted.

19. Amendment to section 16, Ordinance XXXI of 1980.— In the said Ordinance, in section 16, after the expression “director,” the word “key executive,” shall be inserted.

20. Amendment of section 17, Ordinance XXXI of 1980.— In the said Ordinance, in section 17,-

- (a) in sub-section (1), for the word “controlled” the word “managed” shall be substituted;
- (b) for sub-section (2), the following shall be substituted, namely:-

“(2) No modaraba company or any of its directors, key executives, major shareholders or officers or their relatives or the companies or firms in which the above persons are interested as directors, partners or major shareholders shall obtain any facility or loan, advance or credit from the funds of the modaraba or on the security of the assets of the modaraba.

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

Explanation-II.- for the purposes of this Ordinance the expression “major shareholder” means the holder of ten percent or above, of the paid up fund of the modaraba.”.

and

(c) for sub-section (3) the following shall be substituted, namely:-

“(3) A modaraba company shall subscribe in each modaraba floated by it such amount as may be specified by the Commission.”.

21. Amendment of section 18, Ordinance XXXI of 1980.— In the said Ordinance, for section 18, the following shall be substituted, namely:-

“18. Remuneration of modaraba company.- The remuneration of a modaraba company in respect of a modaraba floated and managed by it shall be of such amount as may be specified.”

22. Amendment of section 18A, Ordinance XXXI of 1980.—In the said Ordinance, in section 18A,-

(a) for the heading **“Power to issue directions”** the heading **“Power of the Commission to issue directions, circulars, notifications”** shall be substituted;

(b) for the word “Registrar” wherever occurring the word “Commission may if” shall be substituted;

(c) in sub-section (1), for clause (c) the following shall be substituted, namely:-

“(c) to secure the proper management of any Modaraba generally, issue such directions or circulars or notifications as are necessary to carry out the purposes of this Ordinance or the rules and regulations made thereunder.”;

(e) for sub-section (2) the following shall be substituted, namely:-

“(2) The Commission may, on a representation made to it or on his own motion, modify or withdraw any direction issued or circular issued under sub-section (1), and in so modifying or cancelling any directions or circular may impose such conditions as it may deem appropriate.”.

23. Insertion of section 18B and 18C, Ordinance XXXI of 1980.— In the said Ordinance, after section 18A, amended as aforesaid the following new section shall be inserted, namely:-

“18B. De-registration of modaraba company.- The Commission may upon receipt of any application from the modaraba company de-register a modaraba company upon fulfillment of such terms and conditions as may be specified.

18C. Change of major shareholding of modaraba company.- The Commission may allow the change of major shareholding of the modaraba company subject to such terms and conditions as may be prescribed.”.

24. Substitution of section 19, Ordinance XXXI of 1980.— In the said Ordinance, for section 19, the following heading and section shall be substituted, namely:-

“PART VI

DISCIPLINARY PROCEEDINGS

19. Cancellation of registration.- (1) Where the Commission is of the opinion that,-

- (a) a modaraba company has contravened or has failed to comply with any provision of this Ordinance or the rules or regulations or any direction made or given thereunder; or
- (b) that modaraba company has not fulfilled the fit and proper criteria; or

- (c) that modaraba company failed to float a modaraba within six months from the registration; or
- (d) that modaraba company has become defunct or has been wound up; or
- (e) it in the public interest so to do,

the Commission may, by order in writing exercise such of the following powers as it considers appropriate in the circumstances of the case-

- (a) remove the modaraba company from the management of the modaraba floated by it;
- (b) supersede the board of directors of modaraba company;
- (c) cancel the registration of the modaraba company:

Provided that no such order shall be made without giving the modaraba company an opportunity of being heard.

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

(4) A modaraba company removed from the management of a modaraba under clause (b) of sub-section (1) shall not be entitled to float any modaraba.

(5) A modaraba company aggrieved by an order of the Commission under sub-section (1) may prefer an appeal under section 30 of this Ordinance within thirty days of the date of the order.”.

25. Amendments to section 20, Ordinance XXXI of 1980.— In the said Ordinance, in section 20,-

(a) in sub-section (1),-

(i) for the word “Registrar” wherever occurring, the word “Commission” shall be substituted;

(ii) in clause (a), after the word “rules or” the words “regulations made thereunder or” shall be inserted;

(iii) in clause (b), the word “or” at the end shall be omitted;

(iv) in clause (c), for the expression “Tribunal,” the expression “Court; or” shall be substituted; and

(v) after clause (c), amended as aforesaid, the following new clause shall be inserted, namely:-

“(d) upon an application by the modaraba company made in a manner as may be prescribed, accompanied by a special resolution passed by the certificate holders of a modaraba, for change of

management of a modaraba or change in major shareholding of the modaraba company,

the Commission for the matters mentioned in clauses (a), (b) and (c),”;

(b) for sub-section (2), the following shall be substituted, namely:-

“(2) The Commission for the matter mentioned in clause (d), shall ascertain eligibility of the applicants, examine merits and materiality of the application, require any other information or document, which in the opinion of the Commission is necessary for disposal of the matter and which establishes that the modaraba company is not managing the affairs of the modaraba in accordance with this Ordinance, rules or regulations or any direction made or given thereunder or any condition of the modaraba, pass an order as deemed appropriate:

Provided the Commission shall not pass an order without providing an opportunity of being heard to the existing modaraba company.”.

26. Insertion of section 20A and 20B, Ordinance XXXI of 1980.—

In the said Ordinance, after section 20, the following new sections shall be inserted, namely:-

“20A. Removal of key executives.- (1) Notwithstanding anything contained in any other provision of this Ordinance, where the Commission is satisfied that, –

- (a) continued association of any chairman or director or chief executive or any other key executives of the modaraba company, is or is likely to be detrimental to the interests of the modaraba or its certificate holders or persons whose interest is likely to be affected; or
- (b) the public interest so demands; or
- (c) to prevent the affairs of the modaraba being conducted in a manner detrimental to the interest of its certificate holders or in a manner prejudicial to the interests of modaraba; or
- (d) to secure a proper management of the modaraba,

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

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

Provided that if, in the opinion of the Commission, any delay would be detrimental to the public interest or the interest of its certificate holders of the modaraba the Commission may at the time of giving the opportunity aforesaid or at any time thereafter and pending the consideration of the representation aforesaid, if any, by order direct that:

(a) the chairman or, director or chief executive or key executives shall not, with effect from the date of the order.

(i) act as such chairman or director or chief executive or key executives of the modaraba company; or

(ii) in any way, whether directly, or indirectly, be concerned with, or take part in the management of the modaraba;

(b) any person authorized by the Commission in this behalf shall act as such chairman or director or chief executive of the modaraba company till another person

is elected in a general meeting or a board meeting, as may be directed by the Commission, to fill in the vacancy.

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

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

(a) hold office for a period as may be prescribed by the Commission subject to such conditions as may be specified in the order of his appointment and, subject thereto, for such period, not exceeding three years as the Commission may specify;

(b) not incur any obligation or liability for anything which is done or intended to be done in his capacity as such chairman or director or chief executive.

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

PART VII
INSPECTION, INVESTIGATION AND ENFORCEMENT

20B. Power of the Commission to call for information.- (1) The Commission may, at any time, by notice in writing, require modaraba companies or modarabas to furnish it within the time specified therein or such further time as the Commission may allow, with any statement or information or document relating to the business or affairs of such modaraba company or modaraba (including any business or affairs with which such modaraba company or modaraba is concerned) and, without prejudice to the generality of the foregoing power, may call for information, at such intervals as the Commission may deem necessary.

(2) No modaraba company or modaraba, director, officer, employee or agent or auditor thereof shall, in any document, prospectus, report, return, accounts, information or explanation required to be furnished in pursuance of this part or the rules or regulations made thereunder, or in any application made under this Part or the rules or regulations, make any statement or give any information which he knows or has reasonable cause to believe to be false or incorrect or omit any material fact therefrom.”.

27. Substitution of section 21, Ordinance XXXI of 1980.— In the said Ordinance, for section 21, the following shall be substituted, namely:-

“21. Inspection.— (1) For the purpose of ascertaining whether a modaraba company or a modaraba is complying with or has complied with any provision or requirement of this Ordinance, or rules and regulations made thereunder or the terms and conditions of registration or authorization or prospectus of the modaraba, the Commission may, on its own motion or on an application made by the holders of Modaraba Certificates the value of which is not less than ten per cent of the total subscribed amount of the Modaraba, from time to time inspect any record or document relating to any activity of the modaraba company or modaraba.

(2) The Commission may through a written order authorize one or more of its employees to exercise the powers of the Commission under this section.

(3) In the exercise of his powers under this section, an authorized person may—

(a) require the modaraba company or modaraba or any other person whom he believes is in possession of or has under his control, any record or document referred to in sub-section (1), to produce it to him;

(b) make inspections of a modaraba company or modaraba or any other person whom he has reasonable cause to believe has information relating to any record or document, referred to in sub-section (1), concerning any such record or document or concerning any transaction or activity which was undertaken in the course of or which may affect, the business conducted by the modaraba company or modaraba; and

(c) inspect and make copies or take extracts from, and where necessary take possession of, such documents.

(4) For the purpose of an inspection under this section, the modaraba company or modaraba or any other person mentioned in sub-section (3) shall afford to authorized person access to the records or documents as may be required for the inspection and shall produce to the authorized person such records or documents as he may require.

(5) Any person who, without reasonable excuse, fails to comply with a requirement imposed on him by authorized person under this section commits an offence punishable under this ordinance.

(6) The Commission shall exercise its powers under sub-section (1) without condition of prior notice to the modaraba company and it shall deem that no prejudice is caused to it.”.

28. Insertion of section 21A and 21B, Ordinance XXXI of 1980.— In the said Ordinance, after section 21, the following new section 21A and 21B, shall be insertion, namely:-

“21A. Investigation.- (1) Where the Commission, either on its own motion, or as a result of a complaint received, or on the basis of any other information received, authorize one or more of its employees or one or more other persons (“investigator”) to conduct investigation under this Ordinance and submit an investigation report to the Commission.

(2) Any person who is reasonably believed or suspected by the investigator to have in his possession or under his control any record or document relevant to an investigation under this section or who is so believed or suspected of otherwise having such information in his possession or under his control shall—

(a) produce to the investigator, within the time and at the place as the investigator requires in writing, any record or document specified by the investigator which is or may be, relevant to the investigation and which is in his possession or under his control;

- (b) if required by the investigator, give the investigator an explanation or further particulars in respect of any record or document produced under clause (a);
 - (c) attend before the investigator at the time and place as the investigator requires in writing, and answer under oath administered by the investigator truthfully and to the best of his ability all questions relating to the matters under investigation as the investigator may put to him; and
 - (d) give the investigator all assistance in connection with the investigation which he is reasonably able to give, including responding to any written question by the investigator.
- (3) A person commits an offence under this section shall be liable to be punished under this ordinance if he—
- (a) fails to produce any record or document required to be produced under clause (a) of sub-section (2);
 - (b) fails to comply as required under clause (b) of sub-section (2);
 - (c) fails to attend before the investigator as required under clause (c) of sub-section (2);
 - (d) fails to answer a question put to him by the investigator under clause (c) of subsection (2) or gives a false or misleading answer or who in giving an answer recklessly

makes a false statement or omits material information
known to him; or

(e) fails to comply with clause (d) of sub-section (2).

(4) For the purposes of this section the Commission and the investigation officer appointed under sub-section (1) shall have the same powers as available to it under section 21A and 21B of this ordinance and shall proceed accordingly.

21B. Powers of the investigator in relation to investigations.—(1) The investigator shall, for the purposes of investigations, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (Act V of 1908), while trying a suit, in respect of the following matters, namely:—

- (a) Summoning and enforcing the attendance of any witness and examining him on oath or affirmation;
- (b) compelling the discovery or production of any document or other material object;
- (c) receiving evidence on affidavit; and
- (d) issuing commissions for the examination of witnesses and documents.

(2) Any person who contravenes the requirements of clause (a), (b) or (c) of subsection (1) and if such contravention is deliberate the investigator may, with the prior approval of the Commission, make an application to the Court for attachment of his property or require him to furnish security for his appearance.

(3) Any proceeding before the investigator shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Pakistan Penal Code, 1860 (Act XLV of 1860).

(4) Any contravention of or non-compliance with any orders or directions of the investigator exercising powers under sub-section (1) shall be an offence punishable under this Ordinance.”.

29. Amendment of section 22, Ordinance XXXI of 1980.— In the said Ordinance, in 22,-

(a) before section 22 the heading “**PART VIII WINDING UP**”, shall be inserted;

(b) in sub-section (1),

(i) in clause (a), the words “and all their other dues” shall be omitted; and

(ii) in clause (b), for the word “Registrar” the word “Commission” shall be substituted;

(c) in sub-section (2), -

(i) for the word “Registrar” the word “Commission” shall be substituted;

(ii) for the word “to the Commission” the words “under section 30 of the Act” shall be substituted; and

(iii) for the word “day” the word “date” shall be substituted; and

(d) sub-section (3) shall be omitted.

30. Amendment of section 23, Ordinance XXXI of 1980.— In the said Ordinance, in 23,-

- (a) in the heading, for the expression “Tribunal” the expression “Court” shall be substituted;
- (b) for the word “Tribunal” wherever occurring, the word “Court” shall be substituted;
- (c) for the expression “Registrar” wherever occurring, the word “Commission” shall be substituted;
- (d) in sub-section (1),-
 - (i) in clause (b), the word “or” at the end shall be omitted; and
 - (ii) after clause (b), amended as aforesaid, the following new clause shall be inserted, namely:-

“(ba) the modaraba has suffered losses for three consecutive years; or”;
- (e) for sub-section (2) the following shall be substituted, namely:-

“(2) The Commission may make an application to the Court for the winding up of a modaraba on receipt of an application made under section 21 and 21A or of the report of an inspection or investigation respectively under that sections relating to the modaraba.”;
- (f) after sub-section (2), amended as aforesaid, the following new sections shall be inserted, namely:-

“(2A) in case of clause (i), sub clause (a) and (b) of clause (ii) of sub section (1), the Commission may make an application to the Court on its own motion or on receipt of an application made by the holders of Modaraba Certificates the value of which is not less than two thirds of the total subscribed amount of the Modaraba.

(2B) In case of sub-clause (c) of clause (ii) of sub-section (1), the Commission may make an application to the Court on the basis of the report of the inspection or investigation under section 21 and 21A.”; and

(g) in sub-section (3), for the words “sub-section (1) or (2)” the words “this section” shall be substituted.

31. Insertion of section 23A, Ordinance XXXI of 1980.— In the said Ordinance, after section 23, amended as aforesaid, the following new section shall be inserted, namely:-

“23A. Winding up of Modaraba Company.- Notwithstanding anything contained in the Companies Ordinance 1984, (XLVII of 1984), where it appears to the Commission that it is desirable for the protection of investors or in the public interest that the modaraba company should be wound up under the Companies Ordinance 1984, (XLVII of 1984), the Commission may file a petition for the winding up of the modaraba company with the court under the relevant provisions of the Companies Ordinance 1984, (XLVII of 1984).”.

32. Insertion of section 24A and 24B, Ordinance XXXI of 1980.— In the said Ordinance, after section 23A, inserted as aforesaid, the following new sections shall be inserted, namely:-

“24A. Cognizance of offences.- Notwithstanding anything in the Code of Criminal Procedure, 1898 (Act V of 1898) no court other than the Tribunal constituted under section 24 shall take cognizance of any offence punishable with imprisonment or imprisonment in addition of fine under this Ordinance except on a complaint by an officer authorized in this behalf by the Commission signed by a Commissioner.

24B. Prosecution of offences.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898) all prosecution of offences against any person under this Ordinance shall be conducted by a special public prosecutor appointed by the Commission duly notified in the official Gazette:

(2) On receipt of complaint the Tribunal shall issue summons as for the attendance of the accused in the first instance and on failure of the accused to appear before the Tribunal, warrant of arrest shall be issued by the Tribunal.

(3) The complaint referred in this section shall mean the report in writing of the investigation officer stating the facts constituting the offences along with statements of witnesses recorded under section 32 of

the Act) and copies thereof shall be supplied to the accused free of cost before the commencement of the trial.

(4) Personal attendance of the officer authorized by the Commission to file a complaint before the Tribunal shall not be required during the trial proceedings in the presence of special public prosecutor referred to in sub-section (1).

(5) The Tribunal shall adopt procedure provided for under Chapter XXII-A of the Code of Criminal Procedure, 1898 (Act V of 1898) in the manner not inconsistent with the provisions of this Ordinance and all prosecutions before the Tribunal shall be disposed of and the judgment pronounced, as expeditiously as possible.

(6) The hearing of the matters referred to in sub-section (1) shall not be adjourned except for sufficient cause to be recorded, or for more than fourteen days at one time and Tribunal may impose such cost as it may deems fit.

(7) The Tribunal may, for reasons to be recorded, dispense with any procedure in the Code of Criminal Procedure, 1898 (Act V of 1898) and follow such procedure as it may deem fit in the circumstances of the case for expeditious disposal of the complaint.”.

33. Amendment of section 25, Ordinance XXXI of 1980.— In the said Ordinance, in section 25, in sub-section (1),-

- (a) in clause (a) the words “or in respect of an application by the Registrar for the winding up of a modaraba company,” shall omitted; and
- (b) in the proviso of clause (b), for the word “Registrar” the word “Commission” shall be substituted.

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

- (a) for the expression “Tribunal” wherever occurring the expression “Court” shall be substituted; and
- (b) for the expression “Registrar” wherever occurring, the expression “Commission” shall be substituted.

35. Amendment of section 30, Ordinance XXXI of 1980.— In the said Ordinance, for section 30, the following shall be substituted, namely:-

“30. Appeals.- (1) Any person aggrieved by any final order, judgment, decree or sentence under this Ordinance may prefer an appeal, within thirty days,-

- (a) where the order has been made by a Commissioner or an officer authorized on this behalf by the Commission, to the Appellate Bench under section 33 of the Act;
- (b) where the order has been made by the Appellate Bench referred to in clause (a), to the Court; or

- (c) Where the order, judgment, decree or sentence has been made by the Tribunal, to the Court within whose jurisdiction the order, judgment, decree or sentence is passed:

Provided that no appeal shall lie from an interlocutory order which does not dispose of the entire case before the Tribunal.

(2) An appeal under clause (c) of sub-section (1) lie on any one of the following grounds, namely:-

- (a) the decision being contrary to law or to some usage having the force of law; or
- (b) the decision having failed to determine a material issue of law or usage having the force of law; or
- (c) a substantial error apparent in the procedure provided by or under this Ordinance, which may possibly have led to an error in the decision.

(3) An appeal may be preferred under this section from a decision made ex-parte.

(4) The Court may, on an appeal made to it under clause (b) or (c) of sub-section (1), accept, set aside or vary the order referred to in sub-section (1) or make such other order as the interest of justice require.

(5) The Court shall at the stage of admission of the appeal, or at any time thereafter on the application of the aggrieved person, due notice to the Commission, decide by means of a reasoned order whether the appeal is to be admitted in part or in whole depending on the facts and circumstances of the case:

Provided that the admission of the appeal shall not per se operate as a stay, and nor shall any stay be granted therein unless the Commission has been given an opportunity of being heard.

(6) Notwithstanding anything contained in any other law, the hearing of appeal may continue day to day, unless sufficient cause has shown by the parties jointly or severally which is beyond the control of the parties, the Court may adjourn the hearing for maximum of two dates and such adjournment may not be more than fifteen days at any one time or for more than thirty days in all.

(7) Where on third hearing any party fails to appear and address arguments before the Court, the Court may proceed and decide appeal on merits and it shall be deemed that such party has relinquished its rights to address arguments.”.

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

- (a) before section 31 the following heading shall be inserted, namely:-
“ **PART X MISCELLANEOUS**”
- (b) in sub-section (1),-
 - (i) after the number “4” the number “5” shall be added;
 - (ii) after number “16” the word “or” shall be omitted;
 - (iii) after number “17” the words “or 34B” shall be inserted;and
 - (iv) for the words “five hundred thousand” the words “fifty million” shall be substituted.

37. Insertion of section 31A, Ordinance XXXI of 1980.— In the said Ordinance, after section 31, amended as aforesaid, the following new section shall be inserted, namely:-

“31A. Penalty to be imposed by the Commission.- Wherever a penalty is provided for any offences, contravention of or default in complying with, any of the provisions of this Ordinance, rules or regulations made under this Ordinance, such penalty shall be imposed by the Commission after providing a reasonable opportunity of hearing to the party.”

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

“32. Penalty.- (1) Any person who –

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

(c) contravenes or otherwise fails to comply with any provision of this Ordinance or the Rules or Regulations other than those referred to in sub-section (1) of section 31, shall be liable to pay by way of penalty –

(i) in the case of an individual, chief executive, director or a key executive, such sum which may extend to one hundred million rupees; and

(ii) in the case of modaraba company, such sum which may extend to two hundred million rupees.

(2) Any person aggrieved by an order passed under sub-section (1) may, within thirty days of such order, prefer an appeal under section 30 of this Ordinance:

Provided that no appeal shall be admitted against any order of the Commission unless fifteen percent of the amount of penalty imposed by the Commission under this section, has been paid:

Provided further that the amount paid under this section shall be refunded in case the appeal is decided in favor of the appellant.”.

39. Substitution of section 33, Ordinance XXXI of 1980.— In the said Ordinance, in section 33, sub-section (2) shall be omitted

40. Amendment of section 34, Ordinance XXXI of 1980.— In the said Ordinance, in section 34, for the word “Registrar” wherever occurring the word “Commission” shall be substituted.

41. Insertion of section 34A and 34B, Ordinance XXXI of 1980.— In the said Ordinance, after section 34, amended as aforesaid, the following new sections shall be inserted, namely:-

“34A. Recovery of penalties.—(1) Any penalty imposed by the Commission or amount ordered or required to be surrendered or deposited with the Commission under this Ordinance shall be payable to the Commission and may be recovered from the person in default by the Commission as a decree for the payment of money.

(2) Where the person aggrieved by an order under sub-section (1) has preferred an appeal under section 34 of the Act and the Court has upheld the order of the Commission or the Appellate Bench, such proceedings will automatically be converted into execution proceeding and no fresh notices will be required to be issued to appellant.

(3) Where the person aggrieved by an order under sub-section (1) has not preferred an appeal to the Appellate Bench of the Commission under section 33 of the Act or to the Court under section 34 of the Act and the Court on application of the Commission has confirmed and allowed the conversion or initiation of execution proceedings after notices to the parties as deemed appropriate by the Court under sub-section (4).

(4) The Court shall exercise all the powers of an executing court as provided in the Code of Civil Procedure 1908, (Act V of 1908), for the purposes of recovery of penalties:

Provided that the Court may, for reasons to be recorded, dispense with any procedure in the Code of Civil Procedure, 1908 (Act V of 1908) and follow such procedure as it may deem fit in the circumstances of the case for expeditious disposal.

(5) The executing Court may attach any immovable property or sale of any movable property, including bank accounts of the person or company on whom a penalty has been imposed under this Act or any administered legislation by the Commission and any transaction or attempt to alienate, transfer, encumber or mortgage such property shall be void, illegal and without any lawful authority.

(6) All government departments, authorities, bodies, private entities, housing societies or schemes, by whatever name called, banks and any other concerned entity shall, on the orders of the Court, be bound to assist the Commission in providing details of moveable or immovable property of judgment debtor.

34B. Destruction of documents.- A person who destroys, falsifies, conceals or disposes of or causes or permits the destruction, falsification, concealment or disposal of, any document, which he knows or ought to know is relevant to an inspection under section 21 or an investigation under section 21A, shall commit an offence punishable under section 31 of this Ordinance.”.

42. Amendment of section 36, Ordinance XXXI of 1980.— In the said Ordinance, in section 36, in sub-section (1),-

- (a) after the word “Tribunal” appearing for the first time, the words “or Court” shall be inserted; and
- (b) for the words “the Tribunal” appearing for the second time, the word “it” shall be substituted.
- (c) after the words “by the” the word “Registrar” shall be substituted with the word “Commission”

43. Insertion of section 36A Ordinance XXXI of 1980.— In the said Ordinance, after section 36, amended as aforesaid, the following new section shall be inserted, namely:-

“36A. Registration of mortgage or charge.- A modaraba company which has created mortgage or charge on the property or assets of modaraba or any of its undertaking or both must deliver to the Commission the prescribed particulars of such mortgage or charge, together with the instrument through which the mortgage or charge is created or evidenced in such form and manner as may be prescribed.”.

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

45. Substitution of section 39, Ordinance XXXI of 1980.— In the said Ordinance, for section 39 the following shall be substituted, namely:-

“39. Delegation of Powers.- The Commission may, by notification in the official Gazette, delegate, subject to such limitations, restrictions or conditions, as it may deem fit to impose, any of its powers or functions under this Ordinance to one or more Commissioner or any officer of the Commission.”.

46. Substitution of section 40, Ordinance XXXI of 1980.— In the said Ordinance, for section 40 the following shall be substituted, namely:-

“40. Indemnity.- No suit, prosecutions, or any other legal proceedings or action in damages shall lie against the Commission, or any other officer for anything done in exercise or performance of any functions, power or duty conferred or imposed by or under this Ordinance or any rules or regulations made thereunder unless the act is proved to have been in bad faith.

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

47. Insertion of section 40A, Ordinance XXXI of 1980.— In the said Ordinance, the following new section shall be inserted, namely:-

“40A. Fees payable under this Ordinance.- Charging and determination of fees payable under this Ordinance shall be specified.”

48. Amendment of section 41, Ordinance XXXI of 1980.— In the said Ordinance, in sub-section (2), clauses (i), (iv) and (v) shall be omitted.

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

“(2) Any regulation made under sub-section (1) may provide that a contravention thereof shall be punishable with a fine in Section 32 of this Ordinance.”.

50. Substitution of section 41B, Ordinance XXXI of 1980.—In the said Ordinance, for section 41B, the following shall be substituted, namely:-

“41B. Codes and guidelines.- (1) The Commission may issue and specify such codes, guidelines or policy statements as it considers appropriate for providing guidance –

- (a) in relation to any matter relating to any of the functions of the Commission under this Ordinance;

- (b) in relation to providing guidance to Modaraba Certificate holders or modaraba company;
- (c) in relation to the operation of any provision of this Ordinance.

(2) The Commission may publish any such code, guideline or policy statement in such manner as it deems fit.”.

51. Amendment of section 42, Ordinance XXXI of 1980.— In the said Ordinance, for section 42, for the expression “Companies Act, 1913 (VII of 1913)” the expression “Companies Ordinance, 1984 (XLVII of 1984)” shall be substituted.