

**PART-II**

**Statutory Notification (S.R.O)**

**Government of Pakistan**

**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN**

**NOTIFICATION**

*Islamabad, the 22<sup>nd</sup> April, 2015*

**S.R.O.334(I)/2015.**— The following draft of Modaraba Regulations, 2015, proposed to be made by the Securities and Exchange Commission of Pakistan in exercise of the powers conferred by section 41A of the Modaraba Companies and Modaraba (Floatation and control) Ordinance, 1980 (XXXI of 1980), is hereby published for information of all persons likely to be affected thereby and, as required under proviso to sub-section (1) of section 41A of the said Ordinance, notice is hereby given that objections or suggestions, if any, thereon may be sent to the Commission within fourteen days of the publication of the draft in the official Gazette.

2. Any objection or suggestion which may be received from any person before the expiry of the said period shall be taken into consideration by the Commission.

**Part I**

**Preliminary**

1. **Short title, extent and commencement.**— (1) These regulations may be called the Modaraba Regulations, 2015.

- (2) These regulations shall come into force at once.

2. **Definitions.** (1) In these regulations, unless there is anything repugnant in the subject or context:-

- (a) "certificate of investment (COI)" means any deposit of money with, and includes any amount issued by a modaraba but shall not include:
  - (i) redeemable capital issued under section 120 of Companies Ordinance, 1984(XLVII of 1984);
  - (ii) finance obtained from a financial institution;
  - (iii) advance or application or subscription money for shares in the modaraba;
  - (iv) cash margin or security deposit received in respect of a finance provided by the modaraba;
  - (v) subordinated loans; and
  - (vi) finance obtained from major shareholders, sponsors and associated companies:

Provided that the Commission shall be final authority to determine whether any money deposited, issued or borrowed falls under the definition of COI or otherwise;

- (b) "customer" means a person to whom a finance has been extended by a modaraba;
- (c) "contingent liability" means:
  - (i) a possible obligation that arises past events and whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the enterprise; or

- (ii) a present obligation that arises past events but is not recognized because:
  - (a) it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation; or
  - (b) the amount of the obligation cannot be measured with sufficient reliability and includes, letters of guarantee bid bonds or performance bonds, advance payment guarantees and underwriting commitments;
- (d) “credit rating agency” means a credit rating company registered with the Commission;
- (e) “certificates of investment issuing modaraba” means a financial service modaraba with a valid permission to issue certificate of investment under the modes and instruments approved by the Registrar;
- (f) “documents” include vouchers, cheques, bills, pay-orders, promissory notes, securities for leases (Ijarah)/advances and claims by or against the modaraba or any other record/papers supporting entries in the books of a modaraba;
- (g) “equity” includes paid-up modaraba fund, general reserves, statutory reserves, balance in share premium account, reserve for issue of bonus shares, subordinated loans and unappropriated profits (minus accumulated losses):

Provided that surplus on revaluation of fixed assets as described in section 235 of the Companies Ordinance, 1984 (XLVII of 1984), treasury stocks and surplus on revaluation of investments, if any.

Provided further that—

deferred tax assets appearing in the latest published financial statements shall be deducted from the equity;

Explanation:

(a) For the purpose of this clause, a loan may be classified as subordinated loan if it complies with the following conditions:

- (i) subordinated loan can be issued from any person, preferably from the sponsors;
- (ii) subordinated loan shall be free of cost;
- (iii) subordinated loan shall be un-secured and sub-ordinate to all other indebtedness including deposits;
- (iv) subordinated loan shall be in the form of cash or liquid assets or performing financial assets only;
- (v) Prior approval of the Commission is required for repayment of subordinated loan; and
- (vi) any other conditions as may be imposed by the Commission.

- (b) For the purpose of calculating minimum equity requirements for permission to issue certificates of investment, the exposure of a modaraba in its strategic investments shall be deducted from equity;
- (h) "equity of the customer" includes paid-up capital, general reserves, balance in share premium account, reserve for issue of bonus shares and retained earnings/ accumulated losses, revaluation reserves on account of fixed assets and subordinated loans;

Explanation:

- (i) Revaluation reserves will remain part of the equity for first three years only, from the date of asset revaluation, during which time the customer will strengthen its equity base to enable it to avail facilities without the benefit of revaluation reserves and where a customer gets revaluation during the three years period, the customer will be allowed the benefit from fresh revaluation, to the extent of increase in revaluation reserves, but restricting the benefit of such incremental value to 3 years only. Similarly, if after 3 years, the customer again gets revaluation of the assets with resultant addition in their value, the benefit of such revaluation may also be allowed for the next 3 years, again to the extent of increase in revaluation reserves;
- (ii) for a loan to be classified as subordinated loan, the following conditions shall be met:
  - a) Subordinated loan shall be un-secured and sub-ordinate to modaraba's indebtedness;

- b) Subordinated loan shall be documented by a formal subordination agreement between the provider of the loan and the customer that the loan is subordinate to modaraba claim; and
  - c) subordinated loan shall be in the form of cash or liquid assets only;
- (i) "exposure" includes finance, subscription to or investment in securities and units or certificates or shares of a notified entity, *Shari'ah* compliant placements, deposits with Financial Institutions, Islamic derivatives, but does not include:
  - (a) obligations under guarantees to the extent of cash margin held by a modaraba; and
  - (b) deposits in current and savings accounts other than term deposits.
- (j) "secured" means exposure backed by tangible security and any other form of security with appropriate margins;
- (k) "finance" includes:
  - (i) an accommodation or facility provided on the basis of participation in profit and loss, musharakah or modaraba basis, hire-purchase, lease (Ijarah), rent-sharing, bills of exchange, promissory notes or other instruments with or without buy-back arrangement by a seller, participation term certificate, musharakah or modaraba certificate, term finance certificate;

- (ii) guarantees, indemnities, or any other financial engagement, issued or undertaken on behalf of a person, with a corresponding obligation of the person;
  - (iii) advances, consumer finance, housing finance;
  - (iv) any facility or accommodation provided on the basis of Islamic mode of financing to a person; and
  - (v) any other facility availed by a person;
- (l) "financial institutions" includes,
- (a) a company or an institution whether established under any special enactment and operating within or outside Pakistan which transacts the business of banking or any associated or ancillary business through its branches;
  - (b) a modaraba, leasing company, investment bank, venture capital company, financing company, housing finance company, a non-banking finance company and bank or any institution duly licensed by State Bank of Pakistan; and
  - (c) such other institution or companies authorized by law to undertake any similar business, as the Federal Government may, by notification in the official Gazette, specify for the purpose;
- (m) "fit and proper criteria" means the criteria specified in Schedule-I of these regulations;

- (n) "form" means the forms annexed to these regulations;
- (o) "forced sale value or "FSV" means the value which reflects the possibility of price fluctuations and can be realized by selling the mortgaged, pledged, leased or collaterally held assets in forced or distressed sale conditions;
- (p) "government securities" include *Shari'ah* compliant monetary obligations of the Federal Government or a Provincial Government or of a Corporation wholly owned or controlled, directly or indirectly, by the Federal Government or a Provincial Government and guaranteed by the Federal Government and any other security as the Federal Government may, by notification in the Official Gazette, declare, to the extent determined time to time, to be government securities;
- (q) "listed securities" shall include any share, scrip, debenture, participation term certificate, modaraba certificate, musharakah certificate, Sukuk Certificates, term finance certificate, securities/units of closed and open end schemes or such other instruments as the Commission may by notification in the Official Gazette specify for the purpose and which is accepted for listing on the Stock Exchange;
- (r) "liquid assets" means the *Shari'ah* compliant assets which are readily convertible into cash and includes encashment or realizable value of gold or other precious metals, encashment or realizable value of Government Securities, bank deposits, shares of listed companies which are actively traded on the stock exchange, NIT units, certificates or shares of a closed end fund, deposits issued by DFIs or NBFCs or modarabas rated at least 'A' by a credit rating agency registered with the Commission, and which are actively traded in the market commercial papers rated at least 'A' by a credit rating agency registered with the Commission, listed TFCs and Sukuk rated at least 'A' by a credit rating agency registered with the

Commission and which are actively traded in the market, national saving scheme, securities and units of Open End Scheme for which a duly licensed asset management company quotes daily offer and redemption price;

- (s) “lease (ljarah) key money” includes lease security deposit;
- (t) “non-COI issuing modaraba” means a modaraba which does not have a permission to issue funds by issuance of COI;
- (u) “other form of security” means hypothecation of stock (inventory), assignment of receivables, installments lease (ljarah) rentals, contract receivables, etc.;
- (v) “readily realizable assets” include liquid assets and stocks pledged with the modarabas and are in their possession, with ‘perfected lien’ duly supported with complete documentation;
- (w) “rentals” include rents, lease (ljarah) rentals, rentals in respect of diminishing musharakah facilities, hire purchase installments or any other amount received by a modaraba from its customer against the grant of facility or usufruct of an asset;
- (x) “secured exposure” means exposure backed by tangible security and any other form of security with appropriate margins;
- (y) “tangible security” means readily realizable assets, mortgage of land, plant, building, machinery and any other fixed assets;
- (z) “term finance certificate or TFC” means an instrument issued on the basis of profit and loss sharing for the purpose of raising funds in the form of redeemable

capital;

(aa) “unlisted equity security” means an equity security not listed or quoted on a stock exchange; and

(ab) “unsecured” means the exposure without any security or collateral.

(2) All terms and expressions used but not defined in these regulations shall have the same meanings as in the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (Ordinance XXXI of 1980), Modaraba Companies and Modaraba Rules, 1981 and the Companies Ordinance 1984 (XLVII of 1984).

## **Part – II**

### **Regulations for issuance of certificates of investment (COI) (for financial services modaraba)**

**3. Permission to issue COI (1).-** A financial services modaraba may apply to the Registrar for seeking permission to issue COI under the modes approved by the Religious Board, after complying with the following conditions namely:-

- (a) the modaraba is undertaking activities as a financial services modaraba for a minimum period of three years and has been, as per the audited accounts, making profits for last two years;
- (b) the modaraba meets the minimum equity requirement of Rs. 250 million;
- (c) the modaraba complies with the capital adequacy ratio, as specified in these regulations;

- (d) the modaraba, or any other modaraba in which its sponsors had a stake of more than 10%, has not defaulted on, or obtained write off on finance availed from any financial institution or investor in any of its redeemable capital instruments within the last five years;
- (e) the modaraba, or any other modaraba in which its sponsors had a stake of more than 10%, has not defaulted on any obligation towards any of its COI holders, which term shall include investors in any of its depository arrangements;
- (f) the modaraba is listed on a stock exchange;
- (g) the modaraba has been, as per audited accounts, making profits for a period of last consecutive three years and has distributed dividend at least in two years during the said period;
- (h) the operations of the modaraba and the conduct of its modaraba company and its directors with respect to the modaraba has been in accordance with law;
- (i) the modaraba has been assigned a credit rating of minimum A- from a credit rating agency; and
- (j) any other conditions that may be imposed by the Registrar from time-to-time.

(2) A modaraba which is in compliance with the provisions of this regulation shall make an application to the Registrar along with the evidence of compliance with this regulation.

(3) If the Registrar is satisfied that the modaraba fulfils the conditions prescribed in this regulation, he may give permission to such modaraba to issue COI.

(4) A modaraba which has been given permission to issue COI shall comply with the following conditions, namely:-

- (a) the modaraba shall raise funds by way of issuing "certificate of investment" only;
- (b) the modaraba shall at all times maintain a minimum credit rating of A- and the same shall be updated at least once every year:

Provided that the credit rating obtained shall not be older than 12 months at any given point in time;

- (c) the modaraba shall publish its credit rating in financial statements, website, advertisements and brochures published in relation to the promotion of its business;
- (d) the COI shall be registered on the name of the person to whom it is issued;
- (e) the maturity period of COI shall not be less than three months:

Provided that the COI shall only be redeemable after 45 days of its issuance on the terms and conditions laid out in the COI agreement or product disclosure statement;

- (f) the COI issued by a modaraba shall be capped in the following manner:

Credit Rating	Total COI
AA- and above	4 times of equity
A- to A+	3 Times of equity

- (g) the COI of such modaraba whose credit rating is below A- at the time of coming into effect of these regulations shall not be allowed to issue fresh COI or roll over existing COI and the existing COI shall be paid as and when become due:

Provided that such modarabas shall improve their credit rating to minimum A- within a period of two years from coming into effect of these regulations. In case, the credit rating of A- is not achieved, the permission to issue COI shall stand cancelled;

- (h) at least 15 per cent of the outstanding funds raised through COI by the modaraba, excluding the COI held by financial institutions, shall be invested in government securities, or instruments or investments as notified by the Commission. Such investments or instruments shall be valued at cost or market value whichever is lower and any shortfall in the value of such investments or instruments shall be immediately made-up:

Provided that these instruments or investments are for the benefit of the COI holders only. These instruments shall be kept un-encumbered and disclosed separately in the financial statements of the modaraba:

Provided further that this condition shall also be applicable on a modaraba whose permission to issue COI has been suspended or cancelled till the time all the COI have been repaid;

- (i) a modaraba which, in the opinion of the Registrar, fails to or is unable to repay any COI or part thereof in accordance with the terms and conditions of such COI, upon specific direction from the Registrar, shall no longer grant any finance by whatever name called or make any investment or create any other asset as long

as the default exists:

Provided that this condition shall also be applicable on a modaraba whose permission to issue COI has been suspended or cancelled till the time all the COI have been repaid, and the Registrar has authorized the removal of the suspension/cancellation;

- (j) the modaraba shall report to the Registrar on a fortnightly basis the total amount of its outstanding COI and the securities held there against:

Provided that this condition shall also be applicable on a modaraba whose permission to issue COI has been suspended or cancelled till the time all the COI have been repaid, and the Registrar has authorized the removal of the suspension/cancellation; and

- (k) the modaraba shall provide a return on COI which may be different for different volumes and maturities of COI provided that uniformity is observed within each category:

Provided that COI of listed companies, financial institutions, recognized charitable trusts and statutory bodies shall be exempted from compliance with the provisions of this regulation.

**4. Advertisement by COI issuing modaraba.-** (1) The modaraba shall seek prior approval of the Registrar for the following for any invitation to attract investors either through advertisement by print, electronic or social media outlets or any other form or channel to the public or through private placement.

- (2) All advertisements for inviting persons to participate in a modaraba's COI scheme shall

at the minimum contain the following information:

- (a) credit rating of the modaraba, the name of the rating agency, the date on which the credit rating was issued;
  - (b) minimum and maximum tenor of the COI; and
  - (c) expected profit rate to be paid on the COI;
- (3) All advertisements for inviting a person to invest in a COI scheme of a modaraba must contain the following disclaimer:

“The COI issued by a modaraba are subject to credit risk and are not comparable to deposits placed with a banking company. The prospective COI holders are advised to conduct their own risk analysis.”

**5. Suspension and cancellation of permission to issue COI.-** (1) The permission to issue COI of a modaraba shall automatically stand suspended with immediate effect, if the modaraba becomes non-compliant with any or all of the following conditions:

- (a) its equity falls below the minimum equity required as specified in these regulations;
- (b) its capital adequacy ratio is less than the minimum ratio as prescribed in these regulations; and
- (c) its credit rating drops below the minimum rating stipulated in these regulations.

**Explanation:** Suspension of permission to issue COI means that the modaraba shall not issue any fresh COI. However, the COI issuing modaraba may rollover existing COI only on the written

request of the COI holder.

(2) If the modaraba is able to remove the non-compliance (s) within a period of six months, it shall submit an application, supported by credible documentary evidence, requesting for removal of the suspension. The modaraba shall resume issuing new COI only after the Commission permits it to do so.

(3) If the modaraba remains non-compliant with any or all of the conditions mentioned in these regulation for a period of more than six months, the permission to issue COI shall stand automatically cancelled with immediate effect and the modaraba shall immediately cease to roll-over existing COI and the existing COI shall be repaid as and when they become due:

Explanation: A modaraba whose permission to issue COI has been cancelled shall submit a fresh application in accordance with the criteria laid down in this regulation, if it desires to issue COI.

**6. Maintenance of capital adequacy ratio ('CAR').-** A COI issuing modaraba shall be required to maintain CAR of 10%, as per the criteria given in Schedule II.

**7. Asset liability management system.-** A COI issuing modaraba shall put in place an effective asset liability management system. The modaraba shall monitor their cumulative mismatches (running total) in maturity of assets and liabilities across all time buckets by establishing internal prudential limits. However, the aggregate mismatches (negative gap) during 1-30 days shall not exceed 10% of the total assets.

### **Part-III**

#### **Regulations for Financial Services Modarabas**

**8. Maximum exposure of a modaraba to a person or Group.-** (1) the total outstanding exposure (fund based and non-fund based) by a modaraba to a single person shall not at any

time exceed 15% of the equity of the modaraba (as disclosed in the latest audited financial statements):

Provided that the maximum outstanding fund-based exposure does not exceed 10% of the equity of the modaraba.

(2) The total outstanding exposure (fund based and non-fund based) by a modaraba to a group shall not exceed 25% of the equity of the modaraba (as disclosed in the latest audited financial statements):

Provided that the maximum outstanding fund-based exposure does not exceed 20% of the equity of the modaraba.

(3) Exposure under this regulation shall be calculated as under:

(a) 100% of the funds invested with a financial services modaraba under perfected lien shall be deducted from exposure;

(b) 90% of the following shall be deducted from exposure:-

(i) deposits with any other financial institution or scheduled bank rated at least A or equivalent by a credit rating agency registered with the Commission, under perfected lien; and

(ii) encashment value of government securities and national saving scheme securities, lodged by the customer with the financial services modaraba as collateral;

(c) 85% of the unconditional financial guarantees, payable on demand, issued by the scheduled banks rated at least 'A' or equivalent by a credit rating agency

registered with the Commission, accepted as collateral by modarabas shall be deducted from the exposure;

- (d) 60% of listed term finance certificates and sukuk and shares of KSE 100 index companies held as security with duly marked lien shall be deducted.

Explanation: The TFCs and Sukuk to qualify for this purpose should have been rated at least 'A' or equivalent by a credit rating agency;

- (e) The following weightages will be applicable in respect of permissible placements with financial institutions:

- (i) 10% weightage on exposure to financial institutions with 'AAA' rating.

- (ii) 25% weightage on exposure to financial institutions rated at least 'AA'.

**9. Exposure limits in capital market.-** A modaraba's investment in equity securities of any company shall not exceed five percent of the paid-up capital of the investee company or five percent of its own equity, whichever is less.

Explanation:- For the purpose of this regulation "investments in equity securities" shall be valued at cost of acquisition for the purpose of calculating the above limit:

Provided that the amount of provisions created against permanent diminution shall be deducted from the cost of acquisition of equity investments and the maximum limit.

**10. Minimum conditions for grant of finance.-** (1) A modaraba while providing a finance (including renewal and enhancement) to a customer which is equal to or exceeds five hundred thousand rupees after netting-off the liquid assets held as security, shall give due weight to the credit report relating to the customer or its group obtained from a credit information bureau.

(2) If the credit report of credit information bureau indicates overdue, the modaraba may take exposure on such customer keeping in view its risk management policies and criteria. Moreover, it shall properly record reasons and justifications for granting the finance; for all such relaxations for customers availing finance greater than rupees five million, the modaraba will forward the reasons and rectification plan to the Registrar on a monthly basis.

(3) A modaraba shall not provide finance to a customer who has defaulted or availed a write-off during the last three years.

(4) While granting any finance to the customer other than individuals, modaraba shall obtain copy of accounts relating to the business of each of its customer for analysis and record in the following manner, namely:-

(a) where the exposure does not exceed one million rupees.	Documentary evidence of the net worth of the customer
(b) where the exposure exceeds one million rupees but does not exceed two million rupees	Accounts duly signed by the customer.
(c) where exposure exceeds two million rupees but does not exceed five million rupees.	Accounts duly signed by the customer and counter signed by: (i) a chartered accountant; or (ii) a practicing cost and management accountant in case of a customer other than a public company or a private company which is a subsidiary of a public company.
(d) where the exposure exceeds five million rupees	Accounts duly audited by: (i) a practicing chartered accountant; or (ii) a practicing cost and management accountant in

	case of customer other than a public company or a private company which is a subsidiary of a public company.
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(5) In case the customer is an individual, the modaraba shall obtain documentary evidence of the means of the customer such as wealth statement, statement of assets and liabilities or any other document as may be considered appropriate by the modaraba company.

(6) A modaraba shall, before providing any finance (including renewal and enhancement), ensure that the application for finance is accompanied with a "Customer's Basic Fact Sheet" as prescribed in Schedule-III.

(7) A modaraba shall ensure that the information requested in the basic fact sheet is provided by the customer under his seal and signature.

(8) The application for facility and Customer's basic fact sheet as mentioned in this regulation (Schedule-III), once obtained from a customer will cover repeated facilities of the same customer for a period of three months.

**11. Linkage between equity of the customer and total exposure from financial institutions.**— (1) A modaraba while taking an exposure shall not provide finance if the total exposure availed by the customer from financial institutions exceeds 10 times the equity of the customer as disclosed in the financial statements of the customer:

Provided that the fund based exposure of a customer shall not exceed 4 times of its equity as disclosed in the customer's latest financial statements. The above limit of 4 times of equity shall not be applicable on exposure to financial Institution.

**12. Margin against facilities.** (1) Save as otherwise provided in sub- regulation (2) of this regulation, a modaraba shall apply such margin requirements against finance as approved by their Board of directors of the modaraba company.

(2) A modaraba shall comply with the following margin requirements,-

Shares of listed companies	30% of their current market value.  A modaraba shall monitor the margin on at least weekly basis and shall institute a robust top-up and automatic sell-out process at 25% and 50% erosion in the margin held respectively. A modaraba may choose different percentages on the basis of the documented credit policy approved by their Board.
Listed TFCs	Exposure against listed TFCs which are rated 'A' (or equivalent) or above by a credit rating agency shall be subject to a minimum margin of 10%  Exposure against listed TFCs rated 'A-' and 'BBB' shall be subject to a minimum margin of 20%.
Bank deposits and COI of modarabas or DFIs and Certificates of Musharakah or any approved instrument issued by modarabas with minimum credit rating of A- by a credit rating agency.	15%
Government backed securities	10%
Pledge of trading stocks	25%

Hypothecation of trading stocks	50%
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(3) All guarantees provided shall be for a specific amount and expiry date and shall contain claim lodgment date and shall be backed by 100% realizable securities except that in the case of performance bonds, bid bonds and mobilization advance where the condition of 100% cover of realizable securities may be relaxed up to 50% provided that modarabas hold at least 20% of the guaranteed amount in the form of Liquid Assets as security.

**13. Restrictions on certain types of transactions.- (1) A modaraba shall not:-**

- (a) provide a finance against equity and debt security issued by it or its group companies;
- (b) provide finance against unlisted debt security and unlisted equity security;
- (c) provide finance to any company against equity and debt security of that company or group companies of that company;
- (d) provide finance against shares in physical form of a listed company;
- (e) take exposure against unsecured debt security or instrument, non-rated debt security or instrument and debt security or instrument rated below A- by a credit rating agency:

Provided that a modaraba may take exposure against unsecured debt security issued by scheduled banks rated A- and above by a credit rating agency;

- (f) provide finance against shares of the sponsor and major shareholder (issued in their own name or in the name of their close relative) of a financial institution;
- (g) hold shares on aggregate basis, whether as pledgee, or absolute owner, of an amount exceeding 15% of the paid-up share capital of that company or 15% of its own equity, whichever is less:

Explanation: For the purpose of this regulation the expression “share, equities or scrips” means modaraba certificates, listed shares, units of open end schemes and certificates of collective investment schemes.

- (h) provide finance to its chief executive, directors, key executives or firms or companies in which it or any of its chief executive, directors, key executives, or their close relatives are interested as a partner, director, guarantor or major shareholder;
- (i) allow finance on the guarantee of its chief executive, directors, key executives or major shareholders, or by their close relatives;
- (j) allow finance to any person for speculative purposes;
- (k) allow finance to form a subsidiary company;
- (l) make investment in the shares of a listed company of an amount exceeding 5% of its own equity or 10% of paid up capital of that company whichever is less;
- (l) hold, deal or trade in real estate except for the use of the modaraba itself or where specified by the Registrar by notification in the official Gazette:

Provided that properties acquired by financial services modaraba in satisfaction of its claims shall be disposed of within a maximum period of five years from the date of acquisition;

(n) allow finance purely for the purchase of land/plots.

(2) All investments made by a modaraba on its own behalf shall be made and held by it in its own name.

(3) All the investments made by a modaraba in listed securities shall be credited to its CDC account.

**14. Investment in the shares of un-listed companies.-** Modarabas may make investment in shares of unlisted companies subject to fulfillment of the following conditions:

- (i) total exposure in such companies, does not exceed 5% of the equity of the modaraba as disclosed in the latest audited financial statements;
- (ii) the directors of the modaraba company have no direct or indirect interest in the investee company; and
- (iii) the investee company must have operational track record of three profitable consecutive years preceding the decision;

**15. Regulations for Housing finance for individual.-** (1) The maximum per party limit in respect of housing finance by the modarabas will be Rs.7.5 million.

(2) Modarabas are free to extend mortgage loans for housing, for a period not exceeding twenty years. Modarabas should be mindful of their adequate asset liability matching.

(3) The house financed by the modarabas shall be mortgaged in modaraba's favor by way of equitable or registered mortgage.

(4) Modarabas shall either engage professional expertise or arrange sufficient training for their concerned officials to evaluate the property, assess the genuineness and integrity of the title documents, etc.

(5) The housing finance facility shall be provided at a maximum Loan to Value ratio of 75:100 (75%).

(6) The housing finance facility shall be provided at a maximum of Income to installment ratio of 3:1.

**16. Limit on aggregate liabilities of a modaraba.-** (1) Aggregate liabilities, excluding contingent liabilities and security deposits of a non-COI issuing modaraba shall not exceed ten times of its equity:

Provided that the contingent liabilities shall not exceed the limits prescribed below:

Credit Rating	Maximum Limit (on top of the ten times requirement listed above)
AA- and above	2 times of equity
A- to A+	1.5 times of equity
BBB+	0.5 times of equity

(2) The following shall not constitute contingent liabilities for the purpose of this regulation:

(a) Non-fund based finance to the extent covered by liquid assets;

- (b) Non-fund based finance where the payment is guaranteed by the Federal Government, Provincial Government, financial institution rated AA by a credit rating agency; and
- (c) Claims other than those related to provision of finance (fund based or non-fund based) to the modarabas' constituents, where the probability of conversion of these claims into liabilities is remote in the view of the Auditor.

#### **Part - IV**

#### **Prudential Regulations**

**17. Classification and Provisioning for non-performing assets.-** (1) A financial services modaraba shall observe the criteria for classification of its assets and provisioning as provided in Schedule IV.

(2) In addition to time based criteria provided in Schedule-IV subjective evaluation of performing and non-performing finance shall be made for risk assessment and where considered necessary the category of classification determined on the basis of the aforementioned time based criteria shall be further downgraded:

Provided that such evaluation shall be carried out on the basis of adequacy of security inclusive of its realizable value, cash flow of the customer or lessee, operations in the account and records covering advances and credit worthiness of the customer or lessee.

(3) The status of classification of a rescheduled or restructured non-performing finance shall be changed only when the terms and conditions of the rescheduled or restructured finance are fully met for a period of at least six months (excluding grace period, if any)

from the date of such rescheduling or restructuring and when at least 20% of the outstanding amount (principal and profit) is recovered in cash:

Provided that the above condition of six months retention period shall not apply if the Customer repays or adjusts at least 50% of the restructured or rescheduled loan amount (principal and profit) in cash either at the time of restructuring agreement or later-on during the grace period, if any.

- (4) A modaraba shall ensure that the status of classification and provisioning of a rescheduled or restructured non-performing facility is not changed in its reports to the Registrar merely due to rescheduling or restructuring of a finance and rescheduled or restructured finance shall be reported to the credit information bureau as such and not as default.
- (5) Where the customer subsequently defaults (either on principal rental or profit) after the rescheduling or restructuring of the non-performing finance, the modaraba shall classify the finance or lease (Ijarah) in the same category as it was in at the time of rescheduling or restructuring. Further, modaraba may further downgrade the classification after taking into account the applicable criteria stated in Schedule-IV.
- (3) At the time of rescheduling or restructuring, a modaraba shall reconsider, re-examine and record in detail the viability of the project or business and shall accordingly obtain a revised business plan, latest CIB report and endeavor to obtain additional security to protect its interests.
- (6) a revised business plan and endeavor to obtain additional security to protect its interests.
- (7) A modaraba shall take benefit of realizable value of assets held as collateral against non-performing finance as per criteria given in Schedule V.
- (8) Objective evaluation of investment portfolio and other assets shall be carried out by the

modaraba. Classification of such assets and provisioning required against them shall be determined by keeping in view the risks involved and the requirements of the international accounting standards as notified by the Commission under Section 234(3) of the Companies Ordinance, 1984 (XLVII of 1984) and the technical releases issued by the Institute of Chartered Accountants of Pakistan, from time to time.

(9) A modaraba shall review, at least on a quarterly basis, the recovery of their finance, portfolio and shall properly document the evaluations so made:

Provided that shortfall in provisioning, if any, determined as a result of quarterly assessment, shall immediately be provided in the books of accounts by the modaraba.

(10) The external auditors as a part of the annual audit of the modaraba shall verify that all requirements under these regulations or any other circular issued by the Commission/Registrar for classification of assets and determination of provisions required against them have been complied with.

**18. Reversal of Provisioning.-** Where there is a cash recovery, other than rescheduling or restructuring, a modaraba may reverse specific provisioning held against classified assets to the extent that the remaining outstanding amount of the classified asset is covered by the minimum provisioning required under that particular classified category of assets.

**19. Overdue, default and recovery thereof.-** (1) A modaraba shall provide the Registrar, -

(a) a list of its defaulters on the prescribed format on quarterly basis; and

(b) a list of rescheduled and restructured facility on prescribed format.

Explanation:- For the purpose of regulation, a person shall be declared a defaulter by modaraba

if such person fails to pay-off or liquidate any written obligation towards any modaraba and such failure has continued for a period of twelve months from the date on which the person was required to make the payment or to do or perform the act.

(2) A modaraba, with gross non-performing assets exceeding 1.5 times of its equity, shall establish a dedicated department that will perform its functions in accordance with a special asset management policy approved by the board of directors of the modaraba company.

(3) A modaraba shall set quarterly recovery targets as a percentage of the overdue obligations that shall be monitored by the Board of Directors of the modaraba company.

**20. Internal audit.** - Every modaraba shall have an internal audit department whose head shall report to the board of directors directly and shall, *inter-alia*, be responsible for compliance with these guidelines and for establishing an effective means of testing, checking and compliance with the policy and procedures established by it.

**21. Submission of information by a modaraba.**— (1) Every modaraba shall submit such information including periodical statements, reports, statistics and data in such form and manner and within such time as may be required by the Registrar from time to time.

**22. Prevention of money laundering, terrorist financing and other illegal trades.**— (1) All modarabas shall ensure prevention of money laundering and other illegal trades and abide by such laws, directives and circulars as may be issued by the Federal Government or the Registrar to safeguard the modaraba against involvement in money laundering activities and other illegal trades.

(2) Notwithstanding the generality of this regulation, a modaraba shall comply with the following conditions:-

(a) it shall determine the true identity of the prospective customer or investor

before extending its services and care shall be taken to establish beneficial ownership of all accounts and those using safe custody;

Explanation:- For the purpose of this regulation, customer means a person who has placed funds with the modaraba or has obtained finance from a modaraba or has any business relationship with the modaraba.

- (b) it shall accept money from a customer only after ensuring that an account has been opened in the name of the customer using the account opening form developed by the respective industry associations in consultation with the Registrar;
  - (c) it shall establish effective procedures for obtaining identification from new customers and devise a policy to ensure that business transactions are not conducted with persons who fail to provide evidence of their identity;
  - (d) it shall conduct its business in conformity with the Rules and these regulations and shall not offer services or provide any assistance in transactions which, in the opinion of the modaraba, are associated with money derived from illegal activities;
  - (e) it shall establish effective procedures for monitoring of customer accounts on a regular basis, checking identities and *bona-fide* of remitters and beneficiaries of transactions and retain record of transactions; and
  - (f) it shall not make payment or receive amounts in cash exceeding Rs. 25,000/-.
- (3) All transactions into or from the account maintained with the modaraba which are not usual transactions shall be thoroughly scrutinized and properly investigated by the modaraba.

**23. Procedure for approval for appointment/re-appointment of directors and chief executives.-** (1) A modaraba company shall follow the following procedure for obtaining approval of appointment/re-appointment or any change of its directors or chief executive, -

- (a) In case of casual vacancy in the office of chief executive, one of the directors shall be immediately appointed by the board of directors of the modaraba company as an acting chief executive, who shall perform the functions till the appointment of regular chief executive is approved by the Registrar. Intimation in this regard shall be sent to the Registrar immediately;
- (b) in case of election of directors in the annual or extraordinary general meeting, the modaraba company, within 10 days before the date of the meeting in which election of directors is to be held, shall submit an application for the individuals seeking to contest the elections whether they are retiring directors or otherwise;
- (c) in case of occurrence of any casual vacancy, the modaraba company must submit an application within 10 days of the occurrence of any casual vacancy;
- (d) the application shall be submitted in compliance with the requirements of Schedule-I and be accompanied by information and documents required therein; and
- (e) any deficiency or shortcoming in the information or documents submitted by the modaraba company to the Registrar shall be rectified by the modaraba company within 14 days of the issue of the letter by the Registrar informing the modaraba company of the deficiency or shortcoming:

Provided that where the modaraba company does not remove the deficiency or shortcoming, the Registrar may close the matter.

(2) In case the board of directors of a modaraba company decides to remove its chief executive before the expiration of his term of office through the defined statutory process or the chief executive decides to tender his resignation before the completion of his term of office or replacement of chief executive on completion of his term, the modaraba company shall inform the Registrar at least one month before the decision along-with reasons for the same:

Provided that the modaraba company shall, within this one month period, submit an application complete in all respects, for obtaining approval for appointment of the new chief executive.

**24. Conditions to contest the election of the directors and approval.-** (1) On the expiry of term, only those persons shall be eligible to contest the election of directors, who meet the fit and proper criteria.

(2) Within fourteen days after the election of directors, an application shall be submitted to the Registrar for the approval of the entire board of directors including the chief executive.

**24. Removal of records.-** No modaraba shall remove from Pakistan to a place outside Pakistan, any of its records or documents relating to its business without the prior permission of the Registrar.

**25. Appointment of Special Auditors.-** The Registrar may require special audit of any modaraba in addition to statutory audit, inquiry/ inspection by the Registrar, at any time and may appoint special auditors, the cost of which shall be borne by the modaraba.

**26. Restriction on appointment as chief executive in more than one modaraba**

**companies.-** No person can represent more than one modaraba company as chief executive.

**27. Places of business.-** (1) A modaraba company may open further places of business of a modaraba and it shall intimate the same to the Registrar within 15 days.

(2) The modaraba company shall intimate to the Registrar the closure of any of its places of business of a modaraba within 15 days.

(3) The management company shall provide office space for the modaraba's principal place of business free of any charges except running expenses. In case of any expansion of branches the relevant expenses would be borne by modaraba itself.

## **Part – V**

### ***Shari'ah Compliance***

**28. No modaraba shall be a business which is opposed to the injunctions of Islam.-** All modaraba companies, shall ensure that:

(i) inflows and outflows of resources of modarabas are free from the following:

- a. *Riba* (interest, usury or any other form);
- b. *Qimar* (Gambling);
- c. *Gharar* (Speculation); and
- d. Support from Business Prohibited by *Shari'ah* (e.g. *Drugs and Alcohol, Tobacco, Pork Related Items, etc.*).

(ii) the business of the modaraba managed by it, is carried out strictly in accordance with the prospectus approved by the Religious Board and the model Islamic

financing agreements and the investment products approved by the Religious Board from time to time are followed;

- (iii) major changes in any of the existing product structures, agreements, terms and conditions have a prior written approval from the Religious Board;
- (iv) all material changes in the existing product structures, agreements, terms and conditions are properly communicated to the concerned stakeholders, clients/customers;
- (v) monitoring and review system of *Shari'ah* compliance is introduced covering all activities and products of the modarabas;
- (vi) proper training is provided in the area of *Shari'ah* compliance to the relevant staff, responsible for the monitoring and review; and
- (vii) Irregularities, if any, recorded and reported by internal *Shari'ah* Auditor are rectified under the guidance of the *Shari'ah* Advisor appointed under these regulations.

**29. Investment in shares and other securities:-** (1) A modaraba shall make investments only in the shares, securities or units of modarabas, Islamic banks, takaful companies, Islamic mutual funds, Islamic pension funds, or the companies which has been screened by the *Shari'ah* Advisor in accordance with screening procedure defined under these regulations.

(2) The investment in the shares and other securities shall be subject to the following conditions:

- (i) the purchase and sale of the same scrip on the same day will not be made; and

- (ii) the shares shall not be sold before settlement i.e. their title and possession has been transferred to the modaraba, in accordance with the settlement schedule of the stock exchange.

**30. Screening Procedure:–** (1) The screening test of the selected investee company for the purpose of investment in its shares or other securities shall be conducted by the *Shari'ah* Advisor of the modaraba on the basis of following criteria.

- (i) the business of the investee company is *Halal* and in line with the *Shari'ah*;
- (ii) debt to asset ratio of the investee company is less than 40%. Debt in this case is classified as any interest bearing debts. Zero coupon bonds and preference shares shall be considered as part of the debt;
- (iii) the ratio of non-compliant investments to total assets of the investee company is less than 33%;
- (iv) the ratio of non-compliant income of the investee company to total income is less than 5%. The income includes gross income plus any other income earned by the investee company;
- (v) the ratio of illiquid assets to total assets is at least 25%;

Explanation: Illiquid asset means any asset that *Shari'ah* permits to be traded at value other than the par; and

- (vi) The market price per share is greater than the net liquid assets per share calculated as:  $(\text{Total Assets} - \text{Illiquid Assets} - \text{Total Liabilities}) / \text{number of outstanding shares}$ .

(2) The screening process for each investee company shall be performed on half yearly basis.

Explanation: Charity Rate means the ratio of non-compliant income of the investee company to total income.

(3) A list of such companies' along with their screening process shall be submitted to the Registrar on half yearly basis.

**31. Dividend Purification Process.-** The dividend income shall be purified by deducting the amount equivalent to charity rate for the respective investee company from the total dividend income received by a modaraba.

**32. Non-Shari'ah Compliant income not to form part of modaraba's income:-** (1) The income received by a modaraba from *non-Shari'ah compliant* sources shall not be accounted as part of income of a modaraba, inter-alia the following:

- (i) late payment penalty or surcharge received from any client;
- (ii) the part of dividend income pertains to *non-Shari'ah* compliant business activities of the investee company.
- (iii) any other income received by a modaraba from any transaction which was not carried out in accordance with the principles of *Shari'ah*.

(2) All *non-Shari'ah* compliant income received by a modaraba shall be deemed as a liability of the modaraba and shall be transferred by the modaraba company to a separate account namely charity account opened in the books of a modaraba.

**33. Management of Charity.-** The amount credited in the charity account shall be used in the manner and subject to the conditions stated hereunder:

- (i) all contributions or donation from the charity account shall only be made to the approved charitable organizations registered under Pakistani law as charitable organization (trusts, Hospitals etc). The income tax exemption certificate issued by the Government of Pakistan to that effect shall be considered as an approval for the purposes;
- (ii) the purpose of the donation shall be identified; and
- (iii) the amount available in charity account shall ideally be distributed within three months of its transfer. A summary of operations of the charity account shall be published in the annual accounts of the modaraba.

**34. Investment of surplus funds of modarabas.-** The surplus funds of a modaraba shall only be placed in the accounts to be opened in the Islamic banks or Islamic branches of conventional banks or Islamic mutual funds or products offered by a modaraba or any other *Shari'ah* compliant investment schemes.

**35. Shari'ah Advisor.-** (1) Every modaraba company shall appoint a *Shari'ah* Advisor of the modaraba.

(2) The *Shari'ah* advisor shall be appointed for a period of three years, renewable for the next term(s) of same period.

(3) The modaraba company shall submit the particulars, documents, and terms of appointment of the *Shari'ah* advisor to the Registrar modaraba within 7 days of his appointment.

(4) The casual vacancy caused by the resignation or termination of the *Shari'ah* advisor shall be filled by the modaraba company within 30 days of the resignation or termination as the case may be, under intimation to the Registrar.

**36. Qualification of *Shari'ah* advisor.-** (1) No person shall be appointed as *Shari'ah* advisor unless he is deemed to be a person of acceptable reputation, character and integrity and has the following educational qualification,-

- (i) *Shahadat ul Aalmia* Degree (*Dars e Nizami*) from any recognized Board of *Madaris* with minimum 70% marks and Bachelor's Degree with a minimum of 2nd Class and sufficient understanding of banking and finance; or
- (ii) Post Graduate Degree in Islamic Jurisprudence/*Usooluddin*, L.L.M. (*Shari'ah*), etc. with a minimum GPA of 3.0 or equivalent from any recognized University with exposure to banking and finance; and
- (iii) relevant professional experience and exposure; and
- (iv) must have at least 4 years' experience of giving *Shari'ah* rulings including the period of *Takhasus fil Ifta*; or at least 5 years post qualification experience in teaching or Research and Development in Islamic Banking and finance;
- (v) good knowledge to understand English and make out the required reports;

- (vi) exposure in the areas of business or finance specially Islamic finance;
- (vii) has not been terminated from any organization in any capacity; and
- (viii) does not hold any executive or non-executive position in any modaraba or modaraba company.

(2) The Registrar may relax the requirement of educational qualification and experience in exceptional cases where the person is otherwise qualified for giving *Shari'ah* rulings on banking and financial matters.

**37. Functions and responsibilities of the *Shari'ah* Advisor:-** (1) The *Shari'ah* advisor shall generally perform the following duties and functions in the modaraba:

- (i) to introduce a mechanism which will strengthen the *Shari'ah* compliance by the modaraba, in letter and spirit and ensure that the systems, procedures and policies adopted by the modaraba are in line with the *Shari'ah* principles;
- (ii) to advise the modaraba company so as to ensure that the inflows and outflows of resources of modaraba are *Shari'ah* compliant.
- (iii) to review on regular basis that the business conducted, the transactions carried out and the investments made by the modaraba are in accordance with the principles of *Shari'ah* and goals and objectives of Islamic Law i.e. *Maqasad Ash-Shari'ah* are achieved i.e. the financial products, services, related policies and the instruments are based on *Shari'ah* norms and principles;
- (iv) to vet the new products and services before its submission to the Registrar for its final approval from the Religious Board;

- (v) to make recommendations to the modaraba company for potential improvements and the formulation of policies in line with the *Shari'ah* principles and to advise about the process of rectification of irregularities pointed out by him;
- (vi) to advise on any matter referred to him by the chief executive or the board of directors of the modaraba company;
- (vii) to conduct and arrange *Shari'ah* training programs for the board of directors/officers and the staff of the modaraba; and
- (viii) to determine the non-*Shari'ah* compliant income and ensure its transfer to the charity account.

(2) The *Shari'ah* advisor shall prepare a report on the modaraba's affairs, to be called as "the Annual *Shari'ah* Advisor's Report" which shall cover the overall *Shari'ah* compliance position of the modaraba for the whole year and be prepared on the format provided in Schedule VI.

(3) The report of the *Shari'ah* advisor shall be made part of the annual accounts of the modaraba.

**38. Powers of *Shari'ah* advisor.-** (1) Every *Shari'ah* advisor shall have a right of access at all times to the books, papers, accounts, vouchers, record, information, agreements and reports of the modaraba, whether kept at the registered office of the modaraba company or elsewhere and shall be entitled to require from the directors and other officers of the modaraba company, such information and explanation as he may require for the performance of his duties and the board of directors and all the employees of the modaraba company as well as the modaraba

shall be bound to provide the requisite access to the record and information to the *Shari'ah* advisor.

(2) The *Shari'ah* advisor shall have direct and regular communications with all levels of management.

(3) The fatwa and ruling of the *Shari'ah* advisor in all business transactions shall be binding on the modaraba companies.

(4) The *Shari'ah* advisor shall report to the board of directors of the modaraba.

**39. Dispute Resolution.-** (1) In case of any dispute or difference of opinion arises between modaraba company and the internal *Shari'ah* auditor on the matters relating to *Shari'ah* interpretation, the same shall be referred to the *Shari'ah* advisor for the decision.

(2) In case of difference of opinion between the *Shari'ah* advisor and the board of directors of the modaraba company on the matters relating to the *Shari'ah* interpretation, the same shall be referred to the Registrar.

(3) The Registrar shall decide the case on the basis of available *Shari'ah* ruling, precedent, decisions, or fatwas of the Religious Board or any international *Shari'ah* body otherwise he shall refer the matter to the Religious Board, whose decision shall be the final.

**40. Performance review of the *Shari'ah* advisor :-** (1) The performance of *Shari'ah* advisor shall be reviewed by the Registrar from time-to-time.

(2) The Registrar, after being satisfied that the *Shari'ah* advisor is not performing his duties as required under this mechanism may direct the modaraba company to terminate the services of the *Shari'ah* Advisor before expiry of three years.

**41. Internal *Shari'ah* Audit:** (1) Every modaraba shall strengthen its existing internal audit department established in terms of regulation 20 of these regulations by appointing a qualified *Shari'ah* auditor or providing sufficient training and certification to the internal auditors for the purpose.

(2) The training of the internal *Shari'ah* auditor shall be arranged from a well-known Islamic financial institution.

**42. Duties of internal *Shari'ah* auditor:-** (1) The internal *Shari'ah* auditor shall follow the same reporting norms, as are applicable on the internal auditor under these regulations and the Code of Corporate Governance implemented by the Stock Exchanges.

(2) The minimum required duties of the internal *Shari'ah* auditor shall be to verify on day to day basis of the modaraba that the:

- (a) business transactions of the modaraba are *Shari'ah* compliant;
- (b) agreements entered into by the modaraba are *Shari'ah* compliant, executed on the formats as approved by the Religious Board, without any major change, and all the related conditions are met;
- (c) investments of the modaraba in the shares and other securities are as per list of the companies screened by the *Shari'ah* Advisor;
- (d) process for purifications of dividend income has been carried out by the modaraba company;
- (e) non-*Shari'ah* compliant income has been transferred in charity account and distributed in accordance with the manner prescribed in these regulations;

- (f) surplus funds have been invested in the avenues prescribed in these regulations;  
and
  - (g) to share his findings with the chief executive and *Shari'ah* advisor in respect of all the above matters including irregularities, inadequacy in risk management, governance and internal controls which are necessary to avoid non-*Shari'ah* compliant business transactions in the modaraba.
- (3) The Internal *Shari'ah* auditor shall submit his report on quarterly basis to the board of directors with a copy of the report to the *Shari'ah* advisor of the modaraba.
- (4) The Internal *Shari'ah* auditor shall maintain a liaison with the *Shari'ah* Advisor and seek his guidance and help in case of any difficulty in ensuring *Shari'ah* compliance of any particular transaction.

**43. Compliance on the internal *Shari'ah* auditor's report.-** The board of directors of the modaraba company, in consultation with the *Shari'ah* advisor, shall take necessary steps on the observations/recommendation of the internal *Shari'ah* auditor and prepare an action plan with a timetable for compliance. The audit committee of the modaraba shall monitor the compliance/implementation of the action plan.

## **Part-VI**

### **Relaxations**

**44. Relaxation of regulations.-** If any difficulty arises in giving effect to any of the provisions of these regulations in a particular case, or class of cases, the Commission may, for reasons to be recorded in writing relax such requirements subject to such conditions as it may deem fit.

**45. Repeal and savings.-** (1) Prudential regulations for modarabas issued vide circular No. 4

of 2004 dated January 28, 2004 are hereby repealed.

(2) These regulations shall not affect anything done, order made, notification issued, show cause issued, circular made, proceeding commenced, penalty imposed and/or collected, sanction granted, approval made, fee directed or collected, direction given, investigation, inspection or inquiry conducted or any other action taken or done under or in pursuance of above referred repealed prudential regulations for modarabas shall be valid and under lawful authority.

## **Schedule - I**

### **FIT AND PROPER CRITERIA**

[see Rule 2(m)]

#### **DEFINITIONS:**

"Key Executive" means key executives of the modaraba company/modaraba and includes, interalia, the persons discharging the following functional responsibilities:

- a. Any executive or officer acting as second to chief executive officer including chief operating officer or by whatever name called;
- b. chief financial officer, head of accounts or head of finance;
- c. head of internal audit;
- d. head of information technology;
- e. head of credit or risk management;
- f. head of human resource;
- g. head of operations;
- h. head of marketing/sales;
- i. head of research;
- j. head of treasury or chief investment officer;
- k. head of law, company secretary or compliance officer;
- l. any other functional responsibility which the Commission may include.

#### **APPLICATION AND SCOPE**

(1) The Fit and Proper Criteria in relation to a modaraba company/modaraba is applicable to the following persons:

- (i) promoters and major shareholders/certificate holders of the modaraba company/modaraba;
  - (ii) director of the modaraba company;
  - (iii) chief executive of the modaraba company; and
  - (iv) Key Executives of the modaraba company/modaraba.
- (2) A proposed director or chief executive of the modaraba company shall not assume the charge of office until their appointment has been approved by the Registrar.
- (3) The application for seeking approval of the Registrar under clause (2) shall be submitted by the modaraba company along with the requisite information required under these regulations.
- (4) The appointment of key executives of a modaraba company/modaraba does not require the approval of the Registrar, however a modaraba company/modaraba shall ensure at the time of appointing a key executive that such person qualifies the fit and proper criteria.
- (5) The fitness and propriety of any person shall be assessed by taking into account all the relevant factors including but not limited to the following:
- (a) integrity and track record of such person;
  - (b) financial soundness of such a person;
  - (c) competence and capability of the person; and

- (d) conflict of interest of such person with the business of the modaraba company/modaraba:

Provided that 5(c) and (d) may not be considered while assessing the fitness & propriety of promoters and major shareholders of the modaraba company.

(6) The fit and proper criteria is perpetual in nature and a modaraba company shall ensure compliance with the provisions of fit and proper criteria.

(7) The modaraba company shall within 30 days of each calendar year submit the following documents with regard to its chief executive and directors:

- (a) updated resume;
- (b) CIB reports of the chief executive and directors and the companies, firms, sole proprietorships, etc., where they are interested as directors, chief executives, partners or owners; and
- (c) latest income tax returns/wealth statement.

(8) All persons subject to fit and proper criteria shall report any change with reference to their fitness and propriety to the respective modaraba company within three days of such change taking effect and modaraba company shall within a period of seven days report the same to the Registrar.

(9) Modaraba company shall determine whether any change in the status of its chief executive, directors and key executives is contrary to the requirements of the fit and proper criteria. In case of any change in status result in non-compliance with the fit and proper criteria, the modaraba company shall immediately stop the person from performing his assigned

functions, inform the Registrar and initiate the process for replacement of the individual with a fit and proper individual.

(10) Any violations or circumvention of the fit and proper criteria shall be dealt with under the provisions of the Ordinance.

#### **ASSESSMENT OF FITNESS AND PROPRIETY**

##### **(a) Integrity and Track Record.**

A person shall not be considered fit and proper if he:

- (i) has been convicted of an offence involving moral turpitude;
- (ii) has been involved in the mismanagement of investments, financial or business misconduct, fraud, etcetera;
- (iii) has been the subject to adverse findings, after conducting an inquiry, by the Commission/Registrar or any other regulatory or professional body or government agency;
- (iv) has been actively involved in the management of a company or firm whose registration or license has been revoked or cancelled or which has gone into liquidation or other similar proceedings due to mismanagement of affairs, financial misconduct or malpractices;
- (v) is ineligible, under the Companies Ordinance, 1984 (XLVII of 1984), Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980) or any other legislation or regulation, from acting as a director or serving

in a managerial capacity of a modaraba company, non-bank finance company or a company;

- (vi) has entered into a plea bargain arrangement with the National Accountability Bureau;
- (vii) in case of promoters or major shareholder of modaraba company/modaraba, does not have the requisite disclosed and verifiable financial resources; and
- (viii) in case of promoters or major shareholders of modaraba company/modaraba, does not have an established and proven track record of successfully running a business enterprise for 3 to 5 years, preferably a public listed company.

**(b) Financial soundness**

In determining a person's financial soundness, the following shall be considered:

- (i) whether such person's financial statements or record including wealth statements or income tax returns or assessment orders are available;
- (ii) whether the person has been declared by a court of competent jurisdiction as defaulter in repayment of loan to a financial institution exceeding Rupees one million;
- (iii) whether the latest credit information bureau report of the person shows overdue payments or default to a financial institution;
- (iv) whether the person has applied to be adjudicated as an insolvent and his application is pending;

- (v) whether the person is an un-discharged insolvent;
- (vi) whether the person has been declared a defaulter by a stock exchange; and
- (vii) whether the credit information bureau report of the person shows any default or write-off during the last three years. The modaraba company shall give an affidavit in this regard.

**(c) Competence and Capability**

In determining a person's competence and capability the following shall be considered:

- (i) the directors should be individuals having management or business experience of at least five years at a senior level;
- (ii) the directors shall have basic knowledge of Islamic finance and its products;
- (iii) the directors shall have experience and knowledge in any profession such as banking, collective investment scheme, accounting, law, internal audit or information technology etc.;
- (iv) the chief executive should have a minimum experience of seven to ten years in a senior management position, preferably in the regulated financial services sector;
- (v) the chief executive should have demonstrated, through his qualification and experience, the capacity to successfully undertake the cognate responsibilities of the position; and

- (vi) the key executives must be qualified professionals possessing relevant experience and certification relating to the job or assignment.

**(d) Conflict of interest**

The directors or chief executive of modaraba company shall not:

- (i) be a director in any other modaraba company engaged in a similar business in Pakistan:

Provided that this condition shall not apply to nominees of the Federal or Provincial Governments on the board of directors of any modaraba company;

- (ii) be a director, chief executive, chief financial officer, chief internal auditor, research analyst or a trader (by whatever name or designation called) in a stock brokerage house or in any company or entity owned and controlled by a member of a stock exchange; and
- (iii) be a member of a stock exchange engaged in the business of brokerage or is a spouse of such member or in control of more than 20% shareholding, directly or indirectly through his close relatives.

In case of key executives, the modaraba company must ensure that no key executive shall head more than one functional area that give rise to conflict of interest within the organization. For example, the departments of audit and accounts shall not be headed by the same person. Further, a key executive shall not hold directorship in his or her personal capacity:

- (a) in a business concern which is also a client of the modaraba, and

(b) in any other financial institution.

(e) Information to be provided by promoters, major shareholders (other than a body corporate), proposed directors and proposed chief executive of the modaraba company

1.	Curriculum Vitae/Resume containing:
a	Name: (former name if any):
b	Father's or Husband Name:
c	C.N.I.C # / Passport # (In case of foreign nationals) –(attach copy)
d	Latest photograph
e	Nationality:
f	Age:
g	Contact details:
	i) Residential address:
	ii) Business address:
	iii) Tel:
	iv) Mobile:
	v) Fax:
	vi) E-mail:
g	National Tax Number:
h	Present occupation:
i	Qualification(s):
	i) Academic: (Attach copy) (In case of CEO, HEC verification of all degrees)
	ii) Professional: (Attach copy) (In case of CEO, HEC verification of all degrees)
j	Trainings
K	Experience:
	-(Position held during the last ten years (along with name and address of

	company/institution/ body where appointment held, nature of the company/institution/body and dates of appointment)) In case of CEO, verification of antecedents from all the previous employers
2.	<p>Status of directorship    Shareholder    <input type="checkbox"/>    Nominee    <input type="checkbox"/></p> <p>Name of the shareholders/ Group of shareholders he is representing _____</p> <p>Nature of directorship    Executive    <input type="checkbox"/>    Non-executive    <input type="checkbox"/></p> <p>Independent    <input type="checkbox"/>    Non-independent    <input type="checkbox"/></p> <p>Number of shares subscribed or held _____</p> <p>Personal net worth (copy of wealth statement) _____</p>
3.	Names of companies, firms, sole proprietorships and other organizations of which the proposed person is a chief executive, director, partner, owner, office holder or major shareholder.
4.	CIB report issued by SBP for the companies, firms, sole proprietorships, etc. where the applicant is interested as director (sponsor or major shareholder), chief executive, partner or owner-(attach original CIB reports)
	<p>An undertaking providing details of the following:</p> <p>(i) Any write off availed from any financial institution during the last five years;</p> <p>(ii) Any default of finance obtained from any financial institution during the last five years;</p> <p>(iii) Placement on ECL during the last five years;</p> <p>(iv) Any conviction from any Court of Law during the last ten years; or</p> <p>(v) Any write off or default by any related or affiliated person on by any company on whom the applicant or anyone closely related to him had an interest as sponsor, major shareholder, director, chief executive, key executives, etc. during the last five years.</p>
5.	In the case of appointment of directors the date of Board of directors' meeting in which the appointment of proposed director was approved. (Attach copy of the minutes of the meeting of the Board of directors. If the director is elected, then attach a copy of the minutes of the general meeting of the company.)

6.	Names of persons on the board of the modaraba company who are related to the applicant.
----	---

**Signature** \_\_\_\_\_

\*use additional sheets if required

**(f) Affidavit before the Registrar, Securities and Exchange Commission of Pakistan:**

**(On Stamp Paper of Appropriate Value)**

I, \_\_\_\_\_ son/daughter/wife of \_\_\_\_\_ adult, resident of \_\_\_\_\_ and holding CNIC/ Passport No. \_\_\_\_\_ do hereby state on solemn affirmation as under:-

1. That I am eligible for the position of \_\_\_\_\_ according to the fit and proper criteria for the position of \_\_\_\_\_, annexed to the modaraba companies and Modaraba Rules, 1981.
2. That I hereby confirm that the statements made, undertakings provided and the information given by me including that required under Schedule-I is correct and that there are no facts which have been concealed.
3. That I have no objection if the Registrar, Securities and Exchange Commission of Pakistan requests or obtains information about me from any third party.
4. That I undertake to bring to the attention of the Registrar, Securities Exchange Commission of Pakistan any matter which may potentially affect my status for the

position of \_\_\_\_\_ as per the fit and proper criteria prescribed in these regulations.

5. That all the documents provided to Securities Exchange Commission of Pakistan are true copies of the originals and I have compared the copies with their respective originals and certify them to be true copies thereof.

\_\_\_\_\_  
**DEPONENT**

The Deponent is identified by me

Signature \_\_\_\_\_

**ADVOCATE**

**Name and Seal)**

Solemnly affirmed before me on this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ by the Deponent above named who is identified to me by \_\_\_\_\_, Advocate, who is known to me personally.

Signature \_\_\_\_\_

**OATH COMMISSIONER FOR TAKING AFFIDAVIT**

**(Name and Seal)**

**(g) Information to be provided by a body corporate as promoters and major shareholders of a Company:**

1. financial statements for the last three years;
2. details of business places;

3.     shareholding details;
4.     credit information bureau's report of the company and its directors and sponsors;
5.     details of any write off availed from any financial institution during the last five years;
6.     details of any default of finance obtained from any financial institution during the last five years;
7.     details of any rescheduling of finance obtained from any financial institution during the last five years; and
8.     any substantial adverse verdicts against the company from any court of law during the last ten years.
9.     details of associated companies and subsidiaries;
10.    details of any exiting or potential litigation in the name of the company, its sponsors and directors;
11.    Details of any inquiry, investigation conducted by the Registrar/Commission or any other regulatory or professional body or government agency during the last five years; and
12.    any other information as may be required by the Registrar.

**(h) Information to be provided by key executives of the modaraba company/modaraba:**

1. position and Grade held by the Executive;
2. date of assumption of current position (dd/mm/yyyy); and
3. curriculum vitae/ resume containing:
  - a) Name (Former name, if any);
  - b) Father or husband name;
  - c) CNIC # / Passport # (In case of foreign nationals);
  - d) Nationality; and
  - e) Age:
- f) Contact details:
  - i. residential address;
  - ii. business address;
  - iii. telephone;
  - iv. mobile;
  - v. fax; and
  - vi. email.
- g) National tax number:
- h) Education:
  - i. Academic qualification (HEC verification of all degrees); and
  - ii. Professional qualification (HEC verification of all degrees)
- i) Trainings:
- j) Previous Employment(s) (date-wise) (Verification of antecedents from all previous employers and reasons for any unexplained gaps between two employments).

4. Latest photograph.
5. Has the executive ever been convicted of any offence? If yes, please provide details.
6. Has the executive ever been censured or penalized by any financial regulator (local or foreign)? If yes please give details.
7. Has the executive ever been dismissed from employment? If yes please give details.
8. An undertaking providing details of the following:
  - i. Any write off availed from any financial institution during the last five years;
  - ii. Any default of finance obtained from any financial institution during the last five years;
  - iii. Placement on exit control list during the last five years; and
  - iv. Any conviction from any court of law during the last ten years

(Signature of the concerned official) (Signature and stamp of employer)

**Schedule-II**  
[see regulation 6]

**CAPITAL ADEQUACY RATIO**

ITEMS	AMOUNT
<b><u>Core Capital</u></b>	
1.1 Fully Paid-up Capital	
1.2 Preference Shares (non-cumulative and convertible into ordinary shares)	
1.3 Balance in Share Premium Account	
1.4 Reserve for Bonus Shares	
1.5 General Reserves	
1.6 Statutory Reserve	
1.7 Un-appropriated Profit/(Loss)	
1.8 Sub-Total (1.1 to 1.7)	
Less:	
1.9 Intangible Assets	
1.10 Deferred Tax Assets	
1.11 Treasury Stock	
1.12 Investment in subsidiaries and strategic investments	
1.13 Any Other exposure in Subsidiaries & strategic investments	
1.14 Sub-Total (1.9 to 1.14)	
1.15 Eligible Core Capital (1.8-1.15)	
<b><u>Supplementary Capital</u></b>	

2.1	Revaluation reserves on investments – eligible up to 50%	
2.2	Sub-ordinated debt	
2.3	Sub-Total (2.1 to 2.3)	
Total Capital (1.15 + 2.3)		
<u>Capital Adequacy Ratio</u>		
4.1	Risk Weighted assets (as per Table B)	
4.2	Minimum Capital Requirement (10% or 15% of Total Risk Weighted Assets as per item 4.1)	
4.3	Total Capital	
4.4	Capital Surplus/(Shortfall) – (4.3 – 4.2)	
4.5	CAPITAL ADEQUACY RATIO (4.3/4.1x100)	

#### Risk Weights On-Balance Sheet Exposure

Sr. No.	Items	Book Value	External Risk Rating	Risk Weights	Adjusted Value
1	Cash	xx		0%	xx
2	Balances with Central Banks	xx		0%	xx
3	Deposits with Financial Institutions	xx	1 2 3 4,5 and 6	10% 35% 50% 150%	xx

4	Investments in:				
	4.1 Government Securities	xx		0%	xx
	4.2 Listed equity instruments	xx		100%	xx
	4.3 Unlisted equity investments (other than those deducted from capital)	xx		150%	xx
	4.4 Debt securities and instruments	xx	1 2 3 4,5 and 6	10% 35% 100% 150% %	xx
	4.5 Investment in mutual funds	xx		100%	xx
	4.6 Placements with FIs	xx	1 2 3 4,5 and 6	20% 35% 50% 150%	xx
	4.6 Other investments	xx		100%	xx
5	Finance Facility				
	5.1 Considered performing				
	5.1.1 Fully secured	xx	1 2 3 4,5 and 6 Unrated	20% 50% 100% 150% 100%	xx
	5.1.2 Fully or partially unsecured	xx		100%	xx
	5.2 Staff loans	xx		0%	xx
	5.3 Considered non-performing				

	(Less amount of provision held)				
	5.3.1 Finance Facility fully secured against liquid, mortgaged, pledged and leased assets	xx		100%	xx
	5.3.2 Finance Facility which are fully unsecured or partially secured against liquid, mortgaged, pledged and leased assets	xx		150%	xx
6	Fixed Assets (net of accumulated depreciation)	xx		100%	xx
7	Assets deducted from capital i.e. intangible assets, investment in subsidiary/ strategic investments, any other exposure in subsidiaries/strategic investments and deferred tax assets	xx		0%	xx
8	Other Assets				
	8.1 Deposits & Prepayments	xx		100%	xx
	8.2 Accrued Income on Advance	xx		100%	xx
	8.3 Accrued Income on Deposits Accounts	xx		100%	xx
	8.4 Accrued Income on Government Securities	xx		0%	xx
	8.5 Accrued Income on Investments – Others	xx		100%	xx
	8.6 Others	xx		100%	xx
	Total	xx			xx

**Risk Weights Off-Balance Sheet Exposure:**

The risk weighted assets of any off balance sheet exposure is calculated first converting it to a credit equivalent by multiplying the exposure amount with a credit conversion factor. Then the resulting credit equivalent amount is multiplied by the risk weight associated with the counterparty as given in Table B above. The following credit conversion factors are associated with the off balance sheet items:

<b>Nature of Transaction</b>	<b>Credit Conversion Factor</b>
<b>Financial &amp; other guarantees</b> The obligations which carries the same credit risk as direct extension of credit, such as an undertaking to make a payment to a third party in the event that a counter party fails to meet a financial obligation or an undertaking to a counterparty to acquire a potential claim on another party in the event of default by that party.	100%
<b>Performance related obligations</b> An irrevocable obligation to pay a third party in the event that counterparty fails to fulfill or perform a contractual non-monetary obligation, such as completion of work at a specified date and delivery of goods etc. This includes issue of performance bonds, bid bonds, warranties, indemnities etc.	75%
<b>Underwriting commitments</b> The commitments which require the underwriter to purchase the securities if the issuer failed to sell.	50%
<b>Lending/posting of securities as collateral</b> The lending or posting of securities as collateral. This includes repurchase/reverse repurchase agreements and securities lending/borrowing transaction.	100%
<b>Other Off-balance sheet exposure</b>	

(a) Commitments with certain drawdown	100%
(b) Commitments (e.g. undrawn formal standby facilities and credit lines) for facilities and credit lines with an original maturity of:	20%
1. One year or less	50%
2. Over one year	0%
(c) Commitments that can be unconditionally cancelled at any time without notice	

Rating Grade	PACRA/ JCR – VIS
1	AAA AA+ AA AA-
2	A+ A A-
3	BBB+ BBB BBB-
4	BB+ BB BB-
5	B+ B B-
6	CCC+ and below

**Schedule-III**

[see regulation 10(6)]

**Customer's Basic Fact Sheets**

**CUSTOMER'S BASIC FACT SHEET – FOR CORPORATE**

Date of Request. \_\_\_\_\_

(TO BE COMPLETED IN CAPITAL LETTERS OR TYPEWRITTEN)

**1. CUSTOMER'S PROFILE:**

Name										Address									
Phone#										Fax #					Email Address				
Office					Res.														
National Identity Card #										National Tax #					Sales Tax #				
Import Registration #					Export Registration #					Date of Establishment					Date of opening of A/C				

**2. DETAILS OF DIRECTORS/OWNERS/PARTNERS:**

Name										Address									
Phone#										Fax #					Email Address				
Office					Res.														
National Identity Card #										National Tax #									

Shareholding	Amount	% of Shareholding

3. MANAGEMENT:

A) EXECUTIVE DIRECTORS/PARTNERS:			
Name	Address	NIC #	Phone #
1.			
2.			
B) NON-EXECUTIVE DIRECTORS/PARTNERS:			
Name	Address	NIC #	Phone #
1.			
2.			

4. CORPORATE STATUS:

Sole Proprietorship	Partnership	Public/Private Company

5. NATURE OF BUSINESS:

Industrial	Commercial	Agricultural	Services	Any other

6. REQUESTED LIMITS:

	Amount	Tenor
Fund Based		
Non-Fund Based		

7. BUSINESS HANDLED/EFFECTED WITH ALL FINANCIAL INSTITUTIONS DURING THE LAST ACCOUNTING YEAR

Imports	Exports	Remittances effected (if any)

**8. EXISTING LIMITS AND STATUS:**

	Amount	Expiry date	Status	
			Regular	Amount over-due (if any)
Fund Based				
Non-Fund Based				

**9. ANY WRITE-OFF, RESCHEDULING/RESTRUCTURING AVOIDED DURING THE LAST THREE YEARS:**

Name of Financial Institution	Amount during 1 <sup>st</sup> year		Amount during 2 <sup>nd</sup> year		Amount during 3 <sup>rd</sup> year	
	Write-off	Rescheduled/restructured	Write-off	Rescheduled/restructured	Write-off	Rescheduled/restructured

**10. DETAILS OF PRIME SECURITIES MORTGAGED/PLEDGED:**

<b>A) AGAINST EXISTING FACILITIES:</b>				
Name of Financial Institution	Nature of Security	Total Amount	Rank of Charge	Net Realizable Value
1.				
2.				
<b>B) AGAINST REQUESTED/FRESH/ADDITIONAL FACILITIES:</b>				
Name of Financial Institution	Nature of Security	Total Amount	Net Realizable Value	
1.				

2.			
----	--	--	--

11. DETAILS OF SECONDARY COLLATERAL MORTGAGED/PLEDGED:

A) AGAINST EXISTING FACILITIES:				
Name of Financial Institution	Nature of Security	Total Amount	Rank of Charge	Net Realizable Value
1.				
2.				
B) AGAINST REQUESTED/FRESH/ADDITIONAL FACILITIES:				
Name of Financial Institution	Nature of Security	Total Amount	Net Realizable Value	
1.				
2.				

12. CREDIT RATING (WHERE APPLICABLE):

Name Of Rating Agency	Rating

13. DETAILS OF ASSOCIATED CONCERNS

(AS DEFINED IN ORDINANCE):

Name of Concern	Name of Directors	Shareholding	% of Total shares capital

14. FACILITIES TO ASSOCIATED CONCERNS BY THE CONCERNED FI:

Name of concern	Nature & Amount of limit	Outstanding as on -----	Nature & Value of Securities	Overdues	Defaults

--	--	--	--	--	--

15. DETAILS OF PERSONAL GUARANTEES PROVIDED BY THE DIRECTORS/PARTNERS ETC. TO FIs TO SECURE CREDIT:

Names of the Guarantors	Institutions/ persons to to whom Guarantee given	Amount of Guarantee	Validity Period	NIC #	NTN	Net-worth

16. DIVIDEND DECLARED (AMOUNT) DURING THE LAST THREE YEARS:

During 1 <sup>st</sup> Year	During 2 <sup>nd</sup> Year	During 3 <sup>rd</sup> Year

17. SHARE PRICES OF THE BORROWING ENTITY:

Listed Companies		Break-up value of the Shares in case of Private Limited Company
Current Price	Preceding 12 Months Average	

18. NET-WORTH (PARTICULARS OF ASSETS OWNED IN THEIR OWN NAMES BY THE DIRECTORS/PARTNERS/PROPRIETORS):

Owner's Name	Particulars of Assets	Market Value	Particulars of Liabilities

19. DETAILS OF ALL OVER DUES (IF OVER 90 DAYS):

Name Of Financial Institution	Amount

20. Details of payment schedule if term loan sought.

21. Latest Audited Financial Statements as per requirement of regulation 21(3) to be submitted with the LAF (Loan Application Form).

22. Memorandum and Articles of Association, By-laws etc. to be submitted by the Customer along with the request.

I certify and undertake that the information furnished  
above is true to the best of my knowledge.

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CHIEF EXECUTIVE'S/CUSTOMER'S  
SIGNATURE & STAMP

COUNTER SIGNED BY:

---

AUTHORIZED SIGNATURE & STAMP  
(MODARABA OFFICIAL)

## BORROWER'S BASIC FACT SHEET – FOR INDIVIDUALS

Date of Request. \_\_\_\_\_

(TO BE COMPLETED IN CAPITAL LETTERS OR TYPEWRITTEN)

**1. CUSTOMER'S PROFILE:**

Name										Address									
Phone#										Fax #					Email Address				
Office					Res.														
National Identity Card #										National Tax #									
Father's Name										Father's National Identity Card #									

**2. PREFERENCES (AT LEAST TWO):**

Name										Address									
Phone#										Fax #					Email Address				
Office					Res.														
National Identity Card #										National Tax #									

**3. NATURE OF BUSINESS/PROFESSION:**

Industrial	Commercial	Agricultural	Services	Any other

**4. EXISTING LIMITS AND STATUS:**

	Amount	Expiry date	Status

			Regular	Amount over-due (if any)	Amount rescheduled/ restructured (if any)
Fund Based					
Non-Fund Based					

5. REQUESTED LIMITS:

	Amount	Tenor
Fund Based		
Non-Fund Based		

6. Details of payment schedule if term loan sought.

7. Latest Income Tax Form or Wealth Statement to be submitted by the customer.

I certify and undertake that the information furnished above is true to be best of my knowledge

\_\_\_\_\_  
CUSTOMER'S SIGNATURE & STAMP

COUNTER SIGNED BY:

\_\_\_\_\_  
AUTHORIZED SIGNATURE & STAMP (MODARABA OFFICIAL)

**Signature & Stamp of concerned official**

use additional sheet if required

# **SCHEDULE –IV**

[see regulation 17(1)]

CLASSIFICATION	DETERMINANT	TREATMENT OF INCOME	PROVISIONS TO BE MADE
(1)	(2)	(3)	(4)
Watch list	Where installment, or principal is overdue by 45 days or more from the due date.	-	
Watch list Non-earning	Where installment, profit, rental or principal is overdue by 90 days or more from the due date.	Unrealized profit or rental to be put in Suspense Account and not to be credited to Income Account except when realized in cash.	
Substandard.	Where installment, profit, rental or principal is overdue by 180 days or more from the due	As above	Provision of 35% of the difference resulting from the outstanding balance of principal against the facility less the amount of Liquid Assets realizable without recourse to a Court of Law and adjusted FSV

	date.		of mortgaged, pledged, leased or collaterally held assets as valued by valuers fulfilling prescribed eligibility criteria, in accordance with the requirements provided in regulation 25.
Doubtful.	Where installment, profit, rental or principal is overdue by 360 days or more from the due date.	As above.	Provision of 75% of the difference resulting from the outstanding balance of principal against the facility less the amount of Liquid Assets realizable without recourse to a Court of Law and adjusted FSV of mortgaged, pledged, leased or collaterally held assets as valued by valuers fulfilling prescribed eligibility criteria, in accordance with the requirements provided in regulation 25.
Loss.	Where installment, profit, rental or principal is overdue 540 days or more from the due date.	As above.  As above.	Provision of 100% of the difference resulting from the outstanding balance of principal against the facility less the amount of Liquid Assets realizable without recourse to a Court of Law and adjusted FSV of mortgaged, pledged, leased

	(b) Where financial instruments discounted are not paid or adjusted within 180 days of the due date.		or collaterally held assets as valued by valuers fulfilling prescribed eligibility criteria, in accordance with the requirements provided in regulation 25.
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#### **SCHEDULE – V**

**[see regulation 17(7)]**

#### **UNIFORM CRITERIA FOR DETERMINING THE VALUE OF ASSETS HELD AS COLLATERAL**

- (a) Only liquid assets, leased assets, pledged stocks and property having registered or equitable mortgage (where NOC for creating further charge has not been issued by modaraba) shall be considered for taking benefit for provisioning. The aforesaid assets having *pari-passu* charge shall be considered on proportionate basis of the outstanding amount;
- (b) Hypothecated assets and assets with second charge or floating charge shall not be considered;
- (c) Valuations of leased assets, pledged stocks and mortgaged properties shall be carried out by an independent professional evaluator listed on the panel of evaluators maintained by the Pakistan Banks' Association;
- (d) The evaluators while assigning any values to the leased assets, pledged stocks and mortgaged properties held as collateral, shall take into account all relevant factors affecting the

salability of such assets including any difficulty in obtaining their possession, their location, their condition and the prevailing economic conditions in the relevant sector, business or industry. The realizable value of mortgaged, pledged and leased assets determined by the evaluators must take into account the amount that can be realized from the asset if sold in a forced or distressed sale condition. The evaluators shall in their report explain the assumptions, calculations, formula and method adopted in determination of the realizable values;

(e) The realizable values of leased assets, pledged stocks and mortgaged properties determined by the evaluators shall be subject to verification by the external auditors, who may reject cases of valuation, which in their opinion:

- (i) do not appear to have been professionally carried out and values determined are unreasonable, or
- (ii) are not backed by valid documentation of mortgage, pledge or leased assets and are not supported by legal opinion wherever required.

(f) The categories of liquid assets, pledged stock, leased assets and mortgaged property to be considered for valuation along with discounting factors to be applied would be as under (Apart from the following, no other assets shall be taken into consideration):

**i) Liquid Assets:**

Valuation of Liquid Assets shall be determined by the modaraba itself and verified by the external auditors. However, in the case of pledged shares of listed companies, value should be taken at market value as per active list of Stock Exchange(s) on the balance sheet date. Moreover, valuation of shares pledged against Financing shall be considered only if these have been placed Central Depository Company of Pakistan (CDC), otherwise these will not be admissible for deduction as liquid assets while determining required

provisions.

**ii) Leased assets and mortgaged properties:**

The value of the leased assets and mortgaged properties to be considered for provisioning purpose shall be the FSV and the FSV once determined, shall remain valid for three years from the date of the valuation during which period the leased and mortgaged assets will not be revalued for provisioning purpose. Also the adjustment factors of 80%, 70% and 50% shall be applied on the value so determined for the purpose of determining provisioning requirement in 1st, 2nd and 3rd year of valuation, respectively. Thereafter, the leased and mortgaged assets shall be revalued and the adjustment factor of 50% shall be applied for all subsequent years.

The FSV of leased and mortgaged assets shall be restricted to fresh revaluation or previous value, whichever is less. In case of modaraba's, licensed by the Commission to undertake housing finance services, FSV once determined, shall remain valid for a period of ten years from the date of valuation and an adjustment factor of 70% shall be applied on the value so determined for the purpose of determining provisioning requirement in respect of housing finance for the said period.

Except for a Housing finance Company, if a valuation is older than three years, a fresh re-valuation shall be carried out failing which the valuation shall be taken as nil.

**(iii) Pledged stocks**

The value of the pledged stocks of perishable and non-perishable goods to be considered for provisioning purpose shall be the FSV. In case of pledged stocks, FSV provided by evaluators should not be more than six months old at each balance sheet date. The goods should be perfectly pledged, the operation of the godown(s) or

warehouse(s) should be in the control of the modaraba and regular valid insurance for the benefit of the modaraba, premium payment receipts and other documents should be available. In case of perishable goods, the evaluator should also give the approximate date when these are expected to be of no value. The modaraba shall receive monthly stock statements and conduct quarterly inspections of the pledged goods.

(g) Non-performing finance against which security or in case of lease (Ijarah), additional security is not available, or where mortgaged, pledged or leased assets have not been valued and verified by external auditors, such finance shall continue to be classified and provided for according to the time-based criteria prescribed in Schedule IV.

**SCHEDULE – VI**  
**[see regulation 37(2)]**

**Specimen of Annual *Shari'ah* Advisor's Report**

I have conducted the *Shari'ah* review of \_\_\_\_\_modaraba managed by \_\_\_\_\_ modaraba company for the financial year ended \_\_\_\_\_ in accordance with the requirements of Part-V of these regulations and report that except the observations as reported hereunder, in my opinion:

- i. the modaraba has introduced a mechanism which has strengthened the *Shari'ah* compliance, in letter and spirit and the systems, procedures and policies adopted by the modaraba are in line with the *Shari'ah* principles;
- ii. following were the major developments that took place during the year:
  - a) Research and new product development (brief on the research and new product development, if applicable)
  - b) Training and Development (detail of training conducted by the *Shari'ah* Advisor of the modaraba management and staff, if any).
- iii. the agreement(s) entered into by the modaraba are *Shari'ah* compliant and the financing agreement(s) have been executed on the formats as approved by the Religious Board and all the related conditions have been met;
- iv. to the best of my information and according to the explanations given to me, the business transactions undertaken by the modaraba and all other matters incidental thereto are in conformity with the *Shari'ah* requirements as well as

the requirements of the Prospectus, Islamic financial accounting standards as applicable in Pakistan and Part-V of these regulations;

- v. profit sharing ratios, profits and charging of losses (if any) relating to any COI product conform to the basis and principles of *Shari'ah*.
- vi. the earnings that have been realized from the sources or by means prohibited by *Shari'ah* have been credited to charity accounts.

**Observation(s)**

**Recommendation(s)**

**Conclusion**

**Signature**

Stamp of the *Shari'ah* Advisor

Dated:

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No.SCD/PRDD/Mod.Reg./2015-96

*Bushra*  
*22/4/15*

( Bushra Aslam )  
Secretary to the Commission