



## THE MODARABA COMPANIES AND MODARABA (FLOATATION AND CONTROL) ORDINANCE, 1980.



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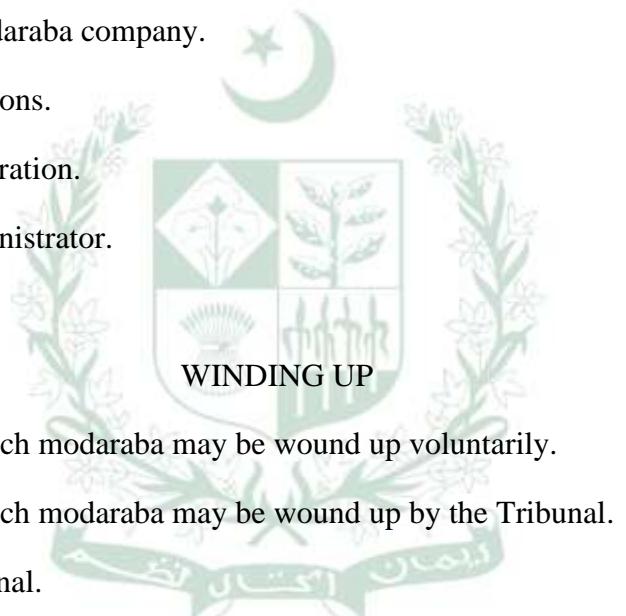
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## THE PAKISTAN CODE

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

**ORDINANCE No. XXXI OF 1980**

*[26th June, 1980]*

## **An Ordinance to provide for matters relating to registration of modaraba companies and the floatation, management and regulation of modarabas.**

WHEREAS it is expedient to provide for matters relating to registration of modaraba companies and the floatation, management and regulation of modarabas and for matters connected therewith or ancillary thereto;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the proclamation of the fifth day of July, 1977, read with the Laws (Continuance in Force) Order, 1977 (*C.M.L.A order No. 1 of 1977*), and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:—

## **PART I**

### **PRELIMINARY**

**1. Short title, extent and commencement.**— (1) This Ordinance shall be called the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

**2. Definitions.**— (1) In this Ordinance, unless there is anything repugnant in the subject or context,—

<sup>1</sup>[(a) “Commission” means the Commission as defined in the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);]

<sup>1</sup>[(ab)] “modaraba” means a business in which a person participates with his money and another with his efforts or skill or both his efforts and skill and shall include Unit Trusts and Mutual Funds by whatever name called;

(b) “Modaraba Certificate” means a certificate of definite denomination issued to the subscriber of the modaraba acknowledging receipt of money subscribed by him;

(c) “modaraba company” means a company engaged in the business of floating and managing modaraba;

<sup>1</sup>Ins. and re-numbered by Act 4 of 1999, s.13.

- (d) "Modaraba Fund" means a fund raised through floatation of modaraba;
- (e) "prescribed" means prescribed by rules;
- (f) "Registrar" means the Registrar appointed under section 3;
- (g) "rules" means rules made under this Ordinance; and
- (h) "Tribunal" means a Tribunal constituted under section 24.

(2) All terms and expressions used but not defined in Ordinance shall have the same meaning as in Companies Act, 1913 (VII of 1913).

**3. Appointment of Registrar.** The Federal Government may, by notification in the official Gazette, appoint a person to be the Registrar for the purpose of this Ordinance.

## PART II

### REGISTRATION OF MODARABA COMPANIES

**4. No company to operate without registration.** No Modaraba company shall operate without registration with the Registrar.

**5. Eligibility for registration.**—(1) A company shall be eligible for registration as a modaraba company if it fulfils the following condition, namely:—

- (a) that it is registered under the Companies Act, 1913 (VII of 1913), or is a body corporate formed under any law in force and owned or controlled, whether directly or through a company or corporation, by the Federal Government or a Provincial Government;
- (b) that, being a company solely engaged in the floatation and management of modaraba, it has a paid up capital of not less than <sup>1</sup>[two and a half million] rupees;
- (c) that, none of its directors, officers or employees has been convicted of fraud or breach of trust or of an offence involving moral turpitude;
- (d) that, none of its directors, officers or employees has been adjudged an insolvent or has suspended payment or has compounded with his creditors.
- (e) that, its promoters are, in the opinion of the Registrar, persons of means and integrity and have knowledge of matters which the company, may have to deal with as a modaraba company; and
- (f) that, being a company also engaged in business other than floatation and management of modaraba, it has paid up capital of such amount and of such nature as may be prescribed.

<sup>1</sup>Subs. by the Modaraba Companies and Modaraba (Floatation and Control) (Second Amendment) Act, 1985 (13 of 1985), s. 2.

**6. Application for registration.**—(1) A company which is eligible for registration as a modaraba company may make an application for registration to the Registrar in such form and with such documents as may be prescribed.

(2) The Registrar, if he is satisfied after such enquiry and after obtaining such further information as he may consider necessary that the applicant is eligible for registration and that it is in the public interest so to do, may grant registration to such company on such conditions as he may deem fit.

(3) In particular and without prejudice to the generality of the powers conferred by sub-section (2), such conditions may include—

- (i) investments to be made;
- (ii) information and returns to be furnished to the Registrar;
- (iii) business to be undertaken; and
- (iv) restriction on transfer of shares by promoters, sponsors or persons holding controlling interest.

### PART III

#### PROVISIONS APPLICABLE TO MODARABAS

**7. Types of modaraba.**—(1) Modaraba may be of two descriptions—

- (i) *Multipurpose Modaraba*: that is to say a modaraba having more than one specific purpose or objective.
- (ii) *Specific purpose Modaraba*: that is to say a modaraba having one specific purpose or objective.

(2) A modaraba may be either for a fixed period or for an indefinite period.

**8. Creation and maintenance of modaraba.**—(1) A modaraba company registered under section 4 shall apply to the Registrar, in such form and with such documents as may be prescribed, for permission to float modaraba.

(2) An application for floatation of modaraba shall be accompanied by a prospectus which shall contain, *inter alia*, the following information, namely:—

- (i) the name and type of the modaraba;
- (ii) the conditions and amounts of the modaraba to be floated and the division thereof into Madaraba Certificate of fixed amount;
- (iii) the business scheme, prospects and mode of distribution of profit;

- (iv) the amount to be subscribed by the modaraba company to the modaraba in its own name supported by evidence about its ability to meet the commitment;
- (v) the form of the Modaraba Certificate; and
- (vi) such other matters as may be prescribed.

(3) The application, the prospectus and the documents filed therewith shall be authenticated by all the directors of the company.

**9. Religious Board.** The Federal Government shall, for the purposes of the Ordinance, constitute a Religious Board which shall consist of such members and shall have such functions, terms and conditions as may be prescribed.

**10. Business of modaraba.** No modaraba shall be a business which is opposed to the Injunctions of Islam and the Registrar shall not permit the floatation of a modaraba unless the Religious Board has certified in writing that the modaraba is not a business opposed to the Injunctions of Islam.

**11. Authorization.**—The Registrar may, after obtaining from the Religious Board a certificate to the effect mentioned in section 10 and on being satisfied that it is in the public interest so to do, grant a certificate in the prescribed form authorising the floatation of modaraba on such conditions as he may deem fit, including conditions as to the business to be undertaken, expenses relating to the management of the Modaraba Fund, preservation of assets and the matters relating to the mode of management and distribution of the profits;

Provided that, before issuing the certificate of authorization the Registrar may require the modaraba company to make such modifications, additions or omissions in the prospectus as the Religious Board may have indicated or as he may deem fit.

**12. Modaraba to be a legal person.**—(1) A Modaraba shall sue and be sued in its own name through the modaraba company.

(2) The assets and liabilities of each modaraba shall be separate and distinct from those of another modaraba as also from those of the modaraba company.

**13. Conditions applicable to modaraba.**—(1) No allotment of Modaraba Certificates shall be made unless a prospectus approved by the Registrar has been issued and the minimum amount stated in the prospectus to be the amount which must be raised in order to provide for the business operation and expenses has been subscribed.

(2) All moneys received from the applicants for Modaraba Certificates for a modaraba shall be deposited and kept in a separate account in a scheduled bank as defined in the State Bank of Pakistan Act, 1956 (XXXIII of 1956) until they are refunded in accordance with the provisions of sub-section (3) or until it is certified by the Registrar that Modaraba Certificates have been allotted in an amount not less than the minimum amount referred to in subsection (1).

(3) If the subscription referred to in sub-section (1) has not been received by the date specified in the prospectus, all moneys received from the applicants shall be refunded to them within fifteen days of the said date and the modaraba company and the directors thereof shall be jointly and severally liable to repay the money which is not so refunded.

(4) The modaraba company shall issue Modaraba Certificates within thirty days from the date of allotment.

(5) The modaraba company shall maintain a register of holders of Modaraba Certificates in such form and in such manner as may be prescribed.

(6) The modaraba company shall maintain separate bank account, funds, assets and liabilities of each modaraba.

(7) No modaraba shall be liable for the liabilities, or be entitled to benefit from the assets, of any other modaraba or of the modaraba company.

(8) A Modaraba Certificate shall be transferable in the manner provided for the prospectus of the modaraba.

**14. Preparation and circulation of annual accounts, reports, etc.**—(1) The modaraba company shall, within six months from the close of the accounting year of the modaraba, prepare and circulate to the holders of Modaraba Certificates:-

- (i) annual balance sheet and profit and loss account in such form and manner as may be prescribed;
- (ii) a report of the auditor on the balance sheet and profit and loss account;
- (iii) a report by the modaraba company on the state of affairs, activities and business prospectus of the modaraba and the amount of profits to be distributed to the certificate holders.

(2) In addition to the documents referred in sub-section (1), the modaraba company shall furnish to the Registrar and to the holders of Modaraba Certificates such reports, accounts and information as may be prescribed or as the Registrar may, at any time by an order in writing, require.

(3) The modaraba company shall submit five copies of the accounts, statements and reports referred to in sub-sections (1) and (2) to the Registrar simultaneously with the circulation of these documents to the holders of Modaraba Certificates.

**15. Audit of accounts.**—(1) The accounts of a modaraba shall be audited by an auditor who is a Chartered Accountant within the meaning of the Chartered Accountants Ordinance, 1961 (X of 1961), appointed by the modaraba company with the approval of the Registrar and such auditor shall have the same powers, duties and liabilities as an auditor of a company has under the Companies Act,

1913 (VII of 1913), and such other powers, duties and liabilities as are, or may be, provided in this Ordinance and the rules.

(2) In addition to other matters, the auditor shall also state in his report whether in his opinion the business conducted, investments made and expenditures incurred by the modaraba are in accordance with the objects, terms and conditions of the modaraba.

**16. Prohibition of false statement, etc.** No modaraba company, director, officer, employee or agent or auditor thereof shall, in any document, prospectus, report, return, accounts, information or explanation required to be furnished in pursuance of this Ordinance or the rules, or in any application made under this Ordinance or the rules, make any statement or give any information which he knows or has reasonable cause to believe to be false or incorrect or omit any material fact therefrom.

**17. Conditions applicable to modaraba company.**—(1) No modaraba company shall engage in any business which is of the same nature and competes with the business carried on by a modaraba floated or controlled by it.

(2) No modaraba company or any of its directors or officers or their relatives shall obtain loan, advance or credit from the funds of the modaraba or on the security of the assets of the modaraba.

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

(3) A modaraba company shall subscribe in each modaraba floated by it not less than ten percent of the total amount of Modaraba Certificates offered for subscription.

**18. Remuneration of modaraba company.** The remuneration of a modaraba company in respect of a modaraba floated by it shall be a fixed percentage of the net annual profits of the modaraba and shall not exceed ten percent of such net annual profits computed in the manner to be prescribed.

**<sup>1</sup>[18A. Power to issue directions.]**—(1) Notwithstanding anything contained in any other provision of this Ordinance, where the Registrar is satisfied that it is necessary and expedient so to do—

- (a) in the public interest; or
- (b) to prevent the affairs of any Modaraba from being conducted in a manner detrimental to the interest of holders of Modaraba Certificates; or
- (c) to secure the proper management of any Modaraba generally, he may issue such directions to a Modaraba company or the Modaraba companies generally, as he may deem fit, and the Modaraba company and its management shall be bound to comply with such directions.

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<sup>1</sup>Ins. by Act XI of 2012, s.2.

(2) The Registrar may, on a representation made to him or on his own motion, modify or withdraw any direction issued under sub-section (1), and in so modifying or canceling any direction may impose such conditions as he thinks fit.]

**19. Cancellation of registration.**— (1) Where the Registrar is of the opinion that a modaraba company has contravened or has failed to comply with any provision of this Ordinance or the rules or with any direction made or given thereunder, he may, if he considers necessary in the public interest so to do, by order in writing—

- (a) cancel the registration of the modaraba company; and
- (b) remove the modaraba company from the management of the modaraba floated by it:

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

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

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

(4) A modaraba company aggrieved by an order of the Registrar under subsection (1) may prefer an appeal to the <sup>1</sup>[Commission] within thirty days of the date of the order.

<sup>2</sup>[(5) An appeal preferred under sub-section (4) shall be disposed of by the <sup>1</sup>[Commission] after giving the appellant an opportunity of being heard.].

**20. Appointment of administrator.**— (1) If—

- (a) the Registrar has reason to believe that a modaraba company has been conducting the affairs of a modaraba in a manner prejudicial to the interest of the modaraba or the holders of Modaraba Certificates or in a fraudulent or unlawful manner or has committed a default in complying with the provisions of this Ordinance or the rules or with any direction made or given thereunder or any condition of the modaraba;
- (b) the registration of a modaraba company has been cancelled; or
- (c) any other modaraba under the management of the modaraba company has been ordered to be wound up by the Tribunal,

the Registrar, after affording the modaraba company an opportunity of being heard, may, without prejudice to any other action under the law, by order in writing,—

- (i) appoint an administrator to take over and manage the modaraba in place of the modaraba company for such period as the Registrar may specify; or

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<sup>1</sup>Subs. by Act 4 of 1999, s.13.

<sup>2</sup>Added by die Modaraba Companies and Modaraba (Floatation and Control) (Amdt.) Act, 1985 (4 of 1985). s. 2.

- (ii) require the modaraba company to carry out such changes in the management and procedure as may be specified; or
- (iii) remove the modaraba company and appoint another modaraba company in its place to manage the modaraba.

(2) The Registrar shall not make an order under sub-section (1) without the approval of the <sup>1</sup>[Commission].

**21. Enquiries.**— (1) The Registrar may, on his own motion or on an application made by the holders of Modaraba Certificates the value of which is not less than ten percent of the total subscribed amount of the modaraba, by an order in writing cause an enquiry to be made by a person appointed by him in this behalf into the affairs of a modaraba company or the modaraba or any business transaction thereof.

(2) Where an enquiry under sub-section (1) has been ordered, every director, manager or other officer of the modaraba company to which the enquiry relates and every other person who has had any dealing with such modaraba company or director or officer shall furnish such information or document in the custody or power or within his knowledge relating to or having a bearing on the subject matter of the enquiry as the person conducting the enquiry may by notice in writing require.

(3) The person conducting an enquiry under sub-section (1) may for the purpose of such enquiry enter into any premises belonging to or in occupation of the modaraba company or of the person to whom the enquiry relates and may call for, inspect and seize books of accounts and documents in possession of any such modaraba company, director, manager, or any other officer or employee thereof.

(4) The person holding an enquiry under sub-section (1) shall, for the purpose of such enquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (Act V of 1908), when trying a suit in respect of the following matters, namely:—

- (a) enforcing the attendance of a person and examining him on oath for affirmation;
- (b) compelling the discovery and production of documents; and
- (c) issuing commissions for the examination of witnesses.

(5) On receipt of the report of the person conducting the enquiry, the Registrar shall take such action as he may consider necessary on the basis of the report.

## WINDING UP

**22. Circumstances in which modaraba may be wound up voluntarily.**— (1) A modaraba floated for a fixed period or for a specific purpose shall be wound up by the modaraba company itself

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<sup>1</sup>Subs. by Act 4 of 1999, s.13.

on the expiry of the period fixed for the modaraba or the accomplishment of the purpose of the modaraba, as the case may be, provided the following conditions are fulfilled, namely:—

- (a) all the directors of the modaraba company shall make a declaration verified by an affidavit to the effect that they have made a full enquiry about the affairs of the modaraba and, having done so, have formed the opinion that the modaraba will be able to discharge its liabilities, pay the amount subscribed by the holders of Modaraba Certificates and all their other dues in full within a period of twelve months, from the date of expiry of the period fixed for the modaraba or the accomplishment of the purpose of the modaraba, as the case may be;
- (b) the declaration referred to in clause (a) shall be supported by a report of the auditor of the modaraba on the affairs of the modaraba and shall have no effect unless it is filed with and approved by the Registrar within ninety days of the date of expiry of the period fixed for the modaraba or the accomplishment of the purpose of the modaraba, as the case may be.

(2) Any person aggrieved by the decision of the Registrar under clause (b) of sub-section (1) may prefer an appeal to the <sup>1</sup>[Commission] within thirty days of the day on which the decision is given.

<sup>2</sup>[(3) An appeal preferred under sub-section (2) shall be disposed of by the <sup>1</sup>[Commission] after giving the appellant an opportunity of being heard.]

**23. Circumstances in which modaraba may be wound up by the Tribunal.**— (1) A modaraba shall be wound up by the Tribunal on an application made by the Registrar if—

- (i) in the case of a modaraba for a fixed period on the expiry of that period or, in the case of a modaraba for a specific purpose on the accomplishment of its purpose, the declaration referred to in section 22 has not been filed with the Registrar within the period specified in that section;
- (ii) in the case of any modaraba, the Registrar has declared that—
  - (a) the modaraba is unable to discharge its liabilities;
  - (b) the accumulated losses of the modaraba exceed fifty percent of the total amount subscribed by the holders of the Modaraba Certificates; or
  - (c) the business of the modaraba is being, or has been, conducted for a fraudulent purpose or with intent to defraud the holders of the Modaraba Certificates, or its creditors or any other person;

<sup>1</sup>Subs. by Act 4 of 1999, s.13.

<sup>2</sup>Added by die Modaraba Companies and Modaraba (Floatation and Control) (Amtdt.) Act, 1985 (4 of 1985), s. 3.

(iii) the Tribunal is of opinion that it is just and equitable that the modaraba should be wound up.

(2) The Registrar may make an application to the Tribunal for the winding up of a modaraba on receipt of an application under sub-section (1) of section 21 or of the report of an enquiry under that section relating to the modaraba.

(3) No application shall be made by the Registrar under sub-section (1) or (2) without giving the modaraba company an opportunity of being heard.

**24. Constitution of Tribunal.**— The Federal Government may, by notification, in the official Gazette, constitute one or more Tribunals for the purpose of this Ordinance and, where it constitutes more than one Tribunal, shall specify in the notification the area within which, or the class of cases in respect of which, each such Tribunal shall exercise jurisdiction under this Ordinance.

(2) A Tribunal shall consist of a person who is, or has been, or is qualified to be a Judge of a High Court.

**25. Powers of a Tribunal.**— (1) A Tribunal shall—

(a) in the exercise of its civil jurisdiction, have in respect of a claim filed by a holder of Modaraba Certificates against the modaraba company or by a modaraba company against any other party with whom it has entered into business transactions relating to Modaraba Fund, or in respect of an application by the Registrar for the winding up of a modaraba company, all the powers vested in a civil court under the Code of Civil Procedure, 1908 (Act V of 1908);

(b) in the exercise of its criminal jurisdiction, try the offences punishable under this Ordinance and shall, for that purpose, have the same powers as are vested in the Court of a Sessions Judge under the Code of Criminal Procedure, 1898 (Act V of 1898);

Provided that a Tribunal shall not take cognizance of any offence punishable under this Ordinance except on a complaint in writing made by the Registrar or an officer authorized by him in writing; and

(c) exercise and perform such other powers and functions as are, or may be, conferred upon or assigned to it by or under this Ordinance.

(2) All proceedings before a Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Pakistan Penal Code (Act XLV of 1860), and the Tribunal shall be deemed to be a court for the purposes of sections 480 and 482 of the Code of Criminal Procedure, 1898.

(3) No Court other than the Tribunal shall have or exercise any jurisdiction with respect to any matter to which the jurisdiction of the Tribunal extends under this Ordinance.

**26. Procedure of the Tribunal.**—(1) Matters before the Tribunal shall come up for regular hearing as expeditiously as possible and, except in extraordinary circumstances and on grounds to be recorded, the Tribunal shall hear the cases from day to day.

(2) In the exercise of its civil jurisdiction, the Tribunal shall, in all suits before it, including suits for recovery of money, follow the summary procedure provided for in Order XXXVII of the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908).

**27. Powers of Tribunal on hearing application for winding up of modaraba.**—(1) If, after hearing the application for winding up of a modaraba, the Tribunal decides to wind up the same it shall appoint a liquidator in consultation with the Registrar and approve a general scheme of winding up.

(2) After a winding up order has been passed by the Tribunal, the modaraba company shall forthwith hand over charge of the modaraba to the liquidator and furnish him with such statements, documents, records, information and other material as may be required by him.

(3) The liquidator shall conduct the winding up proceedings in the prescribed manner under the control and directions of the Tribunal.

(4) The winding up proceedings shall be completed within a period of one year from the date of appointment of the liquidator unless the Tribunal, for special reasons to be recorded in writing, extends the period.

(5) During the winding up proceedings, the Tribunal may allow the administrator appointed by the Registrar under section 20, if any, to continue to function or may appoint an administrator to manage the modaraba till the disposal of the proceedings.

**28. Judgment and decree.**—(1) A Tribunal shall, after the case has been heard, pronounce judgment as early as practicable and on such judgment a decree shall follow forthwith.

(2) The Tribunal shall, on the application of the decree-holder, forthwith order execution of the decree:

Provided that, if the decree is for money, the recovery in execution thereof shall be made as arrears of land revenue.

**29. Finality of orders.** Subject to the provisions for appeal as provided in section 30, no Court or other authority shall call or permit to be called in question any order, judgment or sentence of the Tribunal or the legality or propriety of anything done or intended to be done by the Tribunal under this Ordinance.

**30. Appeals.**—(1) Any person aggrieved by any order judgment, decree or sentence of the Tribunal may, within thirty days of such order, judgment decree or sentence, prefer an appeal to the High Court within whose jurisdiction the order, judgment, decree or sentence is passed:

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

(2) An appeal under sub-section (1) shall be heard by a Bench of two Judges of the High Court and shall lie on any one of the following grounds, namely:—

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

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

**31. Punishment.**— (1) Whoever contravenes the provisions of section 4, 10, 13, 14, 16 or 17 shall be punishable with imprisonment of either description for a term which may extend to three years and with fine which may extend to five hundred thousand rupees.

(2) Where the contravention referred to in sub-section (1) has caused loss to the modaraba or any other person, a further fine to the extent of the loss shall be imposed.

**32. Penalty.**— <sup>1</sup>[(1)] If any person—

- (a) refuses or fails to furnish any documents, return or information which he is required to furnish by or under this Ordinance; or
- (b) refuses or fails to comply with any conditions imposed or made by the Federal Government or direction made or given under this Ordinance or the rules; or
- (c) contravenes or otherwise fails to comply with any provision of this Ordinance or the rules other than those referred to in subsection (1) of section 31,

the Registrar, may, if he is satisfied, after giving the person an opportunity of being heard, that the refusal, failure or contravention was wilful, by order, direct that such person shall pay to the Federal Government by way of penalty such sum not exceeding one hundred thousand rupees as may be specified in the order and, in the case of a continuing default, a further sum calculated at a rate not exceeding one thousand rupees for every day after the issue of such order during which the refusal, failure or contravention continues.

<sup>1</sup>[(2) Any person aggrieved by an order passed under sub-section (1) may, within sixty days of such order, prefer an appeal to the Commission.]

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<sup>1</sup>Re-numbered and added by Act 4 of 1999, s.13.

**33. Liability of director manager or officer of a company.**—(1) Where the person guilty of an offence referred to in sub-section (1) of section 31 or in section 32 is a company or other body corporate, every director, manager or other officer responsible for the conduct of its affairs shall, unless he proves that the offence was committed without his knowledge, or that he exercised all diligence to prevent its commission, be deemed to be guilty of the offence.

(2) Any sum directed to be paid under section 32 shall be recoverable as an arrear of land revenue.

(3) No prosecution for an offence against this Ordinance or the rules shall be instituted in respect of the same facts on which a penalty has been imposed under section 32.

**34. Powers of the Registrar in relation to certain proceedings.** In any proceedings under section 32, the Registrar shall have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (Act V of 1908), when trying a suit in respect of the following matters, namely:—

- (a) enforcing attendance of a person and examining him on oath or affirmation; and
- (b) compelling the discovery and production of documents.

**35. Application of fine.** The Tribunal imposing any fine under this Ordinance may direct that the whole or any part thereof shall be applied in or towards—

- (i) payment of costs of the proceedings;
- (ii) payment to an aggrieved party of compensation for any loss caused by the offence;
- (iii) payment of compensation for any loss mentioned in sub-section (2) of section 31.

**36. Enforcement of provisions of the Ordinance, etc.**—(1) If a modaraba company makes default in complying with any provisions of this Ordinance or a direction made or given under this Ordinance and fails to make good the default within thirty days of the service of a notice to the modaraba company requiring it to do so, the Tribunal may, on an application made to the Tribunal by the Registrar, make an order directing the modaraba company and any director or officer thereof to make good the default within such period as may be specified in the order.

(2) Nothing in this section shall be deemed to prejudice the operation of any provision of this Ordinance providing for the imposition of penalties on the modaraba company or its directors and officers in respect of any such default as aforesaid.

**37. Exemption from tax.** The income of a modaraba shall be exempt from tax under the Income Tax Ordinance, 1979 (XXXI of 1979) if not less than ninety per cent of its profits in a year is distributed to the holders of th Modaraba Certificates.

**38. Power of Federal Government to exempt, etc.** The Federal Government may, by notification in the official Gazette, exempt from the requirements of sub-section (1) and (3) of section 17 a company or a body corporate formed under any law and owned or controlled by the Federal

Government or a Provincial Government, whether directly or through a company or corporation set up such Government.

**39. Delegation of powers.** The Registrar may, by notification in the official Gazette, delegate, subject to such limitations, restrictions or conditions, if any, as he may, from time to time specify, such of his powers and functions under this Ordinance as he may deem fit to any officer subordinate to him.

**40. Indemnity.** No suit, prosecution or other legal proceeding shall lie against the Federal Government or the Registrar or any other officer for anything which is in good faith done or intended to be done under this Ordinance, or any rules.

**41. Power to make rules.**— (1) The Federal Government may, by notification in the official Gazette, make rules<sup>1</sup> for carrying out the purposes of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may include—

- (i) the duties and functions of the Registrar;
- (ii) terms and conditions of a Tribunal;
- (iii) procedure relating to a Tribunal;
- (iv) composition, terms and conditions of the Religious Board;
- (v) procedure relating to the Religious Board;
- (vi) form, contents and other requirements of a prospectus;
- (vii) issue and allotment of Modaraba Certificates;
- (viii) maintenance of modaraba accounts and funds;
- (ix) form of balance sheet and profit and loss account;
- (x) audit and auditor's certificate;
- (xi) annual and periodical accounts and reports;
- (xii) inspection of record and supply of copies of documents;
- (xiii) matters relating to winding up;
- (xiv) matters and procedure relating to enquiries;

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<sup>1</sup>For such rules, see S.R.O. 83(I)/80, dated 26-1-81, Gaz., of P., 1981, Extra, Pt. II, pp. 171-217.

(xv) charging and determination of fees payable under this Ordinance; and

(xvi) such other matters as are to be or may be prescribed.

<sup>1</sup>[**41A. Power to make regulations.**—(1) The Commission may, by notification in official Gazette, make such regulations as are necessary to carry out the purposes of this Ordinance:

Provided that the power to make regulations conferred by this section shall be subject to the condition of previous publication and before making any regulations the draft thereof shall be published in the manner considered most appropriate by the Commission for eliciting public opinion thereon within a period of not less than fourteen days from the date of publication.

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

**41B. Power to issue directives, circulars, codes, guidelines, etc.**—The Commission may issue such directive, circulars, codes, guidelines or notifications as are necessary to carry out the purposes of this ordinance and the rules and regulations made thereunder.]

**42. Act to override other laws.** The provisions of this Ordinance shall have effect notwithstanding anything contained in the Companies Act, 1913 (VII of 1913) or any other law for the time being in force.

**43. Removal of difficulties.** If any difficulty arises in giving effect to any provision of this Ordinance, the Federal Government may make such order, not inconsistent with the provisions of this Ordinance, as may appear to it to be necessary for the purpose of removing the difficulty.

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## THE PAKISTAN CODE

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<sup>1</sup>Ins. by Act XI of 2012, s.3.