

21. State the different kinds of contracts on your Exchange, e.g. spot, ready and forward. Also state the period of delivery and payment in each case
22. Give details of the scale of brokers' commission and other charges, if any, prescribed by your Exchange
23. Do your rule prescribe a standard form of contract for the use of your members?
24. Do you classify your members into brokers and jobbers?
25. Do you have any regulations regarding dealings by members on their own account?
26. Do you have regulations regarding extension by members of credit to any person for the purpose of purchasing any security?
27. Do you prescribe the circumstances in which members can borrow on any security or lend on any security carried for the account of a customer?
28. Do you prescribe the circumstances under which a member can hypothecate any security carried for the account of any customer?
29. Do you have a Clearing House for the settlement of contracts? If so, give details of its organization and management
30. Will you have any arrangements for recording of bargains?
31. Will you have any arrangements for recording and publishing market rates?
32. What are the disciplinary powers available with the governing body to enforce due compliance by members of the regulations of the Stock Exchange and generally to ensure proper standard of business conduct?

PART V

MISCELLANEOUS

33. What will be the conditions subject to which securities can be listed on your Exchange?
34. What are the criteria for admitting any security to forward trading?
35. Under what circumstances do you have right, if any, to circumscribe or suspend dealings in a listed security?
36. What provisions have you made for the levy and recovery of fees, fines and penalties?

FORM II

(See rule 9)

PERIODICAL RETURN UNDER SECTION 6(2) OF THE SECURITIES AND EXCHANGE ORDINANCE, 1969 RELATING TO THE AFFAIRS OF A STOCK EXCHANGE FOR THE MONTH OF ...

To

¹⁴[The Corporate Law Authority
Government of Pakistan,
Islamabad.]

1. Name of the Stock Exchange
2. (a) Particulars of applications for listing received
- (b) Particulars of those admitted to quotation
- (c) Particulars of those refused listing and reasons thereof in each case
3. Particulars of securities delisted and reasons thereof in each case
4. Particulars of member disciplined and nature of offence/violation committed
5. Particulars of members declared defaulters

14. Subs. by S.R.O. 669(1)/82, dated 10.7.1982.

6. Particulars of members whose net capital balance fell below the prescribed amount
 7. Particulars of non-compliance of any regulations of the Stock Exchange by any company whose securities are listed on the Stock Exchange
 8. Trading volume during the month--
 - (a) Spot
 - (b) Ready
 - (c) Forward
 9. Particulars of securities which registered a rise/decline of ten per cent, or more in value during the month.
 10. Particulars of securities in which no transactions took place during the month
 11. Brief analysis of the stock market trends during the month
- Place *Signature*
- Date *Designation*

FORM III

(See rule 11)

FORM OF APPLICATION UNDER SECTION 9 OF THE SECURITIES AND
EXCHANGE ORDINANCE, 1969 FOR LISTING A SECURITY ON A
STOCK EXCHANGE

To

.....
.....

Dear Sir,

We hereby apply for the listing of our.....

(Name of the Security)

on your stock exchange.

2. Necessary information and documents as required in the annex to this form are furnished.

Yours faithfully,

.....
Signature and address

ANNEX TO FORM III

1. The following particulars and documents shall be annexed to the listing application, namely:--

(1) Memorandum and Articles of Association and, in case of debentures, a copy of the trust deed;

(2) Copies of prospectuses issued by the company in respect of any security already listed on a stock exchange;

(3) Copies of balance-sheets and audited accounts for the last three completed years or for a shorter number of years if the company has been in existence only for such years;

(4) A brief history of the company since incorporation giving details of its activities including any reorganisations, changes in its capital structure and borrowings;

(5) A statement showing,--

(a) dividends and cash bonuses paid during the last 10 years or such shorter period as the company may have been in existence;

(b) dividends or interest in arrears, if any.

(6) Certified copies of agreements or other documents relating to arrangements with or between,--

(a) vendors and/or promoters,

(b) underwriters,

(c) brokers.

(7) Certified copies of agreements with,--

(a) managing agents,

(b) selling agents,

(c) managing director and technical directors.

(8) A statement containing particulars, dates of and parties to all material contracts, agreements (including agreements for technical advice and collaboration), concessions and similar other documents except those entered into in the normal course of the company's business or intended business together with a brief description of the term of such agreements.

(9) Certified copies of the agreements with the NIT, ICP, PICIC, IDBP and any other financial institution.

(10) Names and addresses of the directors and persons holding ten per cent. or more of any class of equity security as on the date of application together with the number of shares or debentures held by each.

(11) Particulars of security for which listing is sought.

2. The stock exchange may, either generally by its bye-laws or in any particular case, call for such further particulars or documents or undertakings as it deems proper.

FORM IV

(See rule 13)

STATEMENT OF BENEFICIAL OWNERSHIP OF SECURITIES UNDER SECTION 12 OF THE SECURITIES AND EXCHANGE ORDINANCE, 1969

- | | |
|---|------------------|
| | As at |
| 1. Name of the director/officer/share-holder | |
| 2. Whether a director, officer or shareholder or the issuer | |
| 3. Particulars of the securities beneficially owned | |
| 4. Name of the stock exchange at which such securities are listed | |
| 5. ¹⁵ Beneficially owned in the name of | |
| (a) Self | No..... Rs. |
| (b) any other person | No..... Rs. |
| 6. ¹⁶ Particulars of any purchases or sales during the month | |
| 7. Gain made during the month by the purchase and sale, or the sale and purchase, of any such security within the preceding six months showing date of purchase and sale or sale and purchase and purchase and sale price thereof | |
| 8. Whether such gain has been reported to the issuer? If so, please furnish evidence | |
| 9. Whether such gain has been tendered to the issuer? If so, please furnish evidence. If not, has a demand therefor been received? | |

15. State both number of shares and their value at cost.

16. State both number of shares and their cost and sale value alongwith date of each such purchase or sale.

10. Particulars of such gain not tendered to or recovered by the issuer within six months of its accrual

I declare that the information given in respect of my own self and of the persons mentioned above is correct and complete to the best of my knowledge and belief.

Place

Date

.....
Signature and addresses

- N.B.--
1. Please furnish separate statements for each class of equity security of an issuer beneficially owned.
 2. The statement must be signed by the beneficial owner himself, and in the case of a company, by the Secretary, Manager, or a Director of the company].

¹⁷[SECOND SCHEDULE]

[See rule 12(2)]

PART I GENERAL

In this Schedule, unless there is anything repugnant in the subject or context,--

- (i) "accounting policies" includes the principles, basis, conventions, rules and procedures adopted by directors in preparing financial statements of a company;
- (ii) "associated companies" and "associated undertakings" mean any two or more companies or, as the case may be, undertakings interconnected with each other in the following manner, namely:--
 - (a) if a person who is the owner or a partner or director of a company or undertaking or who directly or indirectly, holds or controls shares carrying not less than ten per cent of the voting power in such company or undertaking is also the owner or partner or director of another company or undertaking, or, directly or indirectly, holds or controls shares carrying not less than ten per cent of the voting power in that company or undertaking; or

17. Second Schedule subs. by Notification S.R.O. 669(I)/82, dated 10.7.1982.

- (b) if the companies or undertakings are under common management or control or one is the subsidiary of another; or
- (c) if the undertaking is a modaraba managed by the company;

then the two companies or undertakings or the companies and undertakings or the company and undertaking, as the case may be, shall be deemed to be "associated companies" or "associated undertakings" and the person who is the owner of or a partner or director in a company or undertaking or who so holds, or controls shares carrying not less than ten per cent of the voting power in a company or undertaking, shall be deemed to be an "associated person" of every such other person and of the person who is owner or a partner or director in such other company or undertaking, or who so holds or controls such shares in such other company or undertaking;

Provided that the shares shall be deemed to be owned, held or controlled by a person if they are owned, held or controlled by that person or by the spouse or minor children of the person;

Provided further that--

- (i) directorship of a person or persons by virtue of nomination by the Federal Government or any Provincial Government or a financial institution directly or indirectly owned or controlled by such Government; or
- (ii) shares owned by the National Investment Trust or the Investment Corporation of Pakistan or a financial institution directly or indirectly owned or controlled by such Government;

shall not be taken into account for determining the status of a company or undertaking as an associated company, associated undertaking or associated person;

- (iii) "controlled firm" means a firm the management of which is controlled by a company or where the company is entitled to more than fifty per cent of its profits or is liable to bear more than fifty per cent of its losses;
- (iv) "debts" includes loans and advances and other receivables where it relates to amounts written off and provision for doubtful and bad debts;
- (v) "executive" means an employee other than the chief executive and directors whose aggregate basic salary or remuneration ¹⁸[* * *] exceeds one hundred thousand rupees in a financial year;
- (vi) "financial statements" includes balance sheet, profit and loss account and statement of changes in the financial position or statement of sources and application of funds;
- (vii) "funds" in relation to any reserve, shall be used only where such a reserve is represented by specifically earmarked investments or other assets realisable at not less than the amount of the reserves;

18. Words omitted by Notification No. S.R.O. 859(1)/83, dated 29.8.1983.

- (viii) "liability" includes all liabilities in respect of expenditure contracted for and all contingent liabilities;
- (ix) "prior period items" means charges or credits that arise in the current financial year as a result of errors or omission in the preparation of financial statements of one or more prior financial years;
- (x) "provision" means any amount written off or retained by way of providing for depreciation, renewals and diminution in value of assets, or retained by way of providing for any known liability of which the amount cannot be determined with substantial accuracy;

Provided that any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets, not being an amount written off in relation to fixed assets or any amount retained by way of providing for any known liability, is in excess of that which, in the opinion of the directors, is reasonably necessary for the purpose, the excess shall be treated for the purpose of this Schedule as a reserve and not as a provision;

- (xi) "reserve", subject to the proviso to clause (x) does not include any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability;
- (xii) "turnover" means the gross income exclusive of trade discount shown on invoices of bills, derived from sale of goods or from rendering, giving or supplying services or benefits or from execution of contracts;
- (xiii) "unusual items" means gains or losses that derive from events or transactions which are distinct from the ordinary activities of a company and therefore are not expected to recur frequently or regularly; and
- (xiv) any term or expression not defined in the rules or this Schedule shall be construed to mean the same as under the generally recognised accounting principles.

2. The following shall be disclosed in the financial statements namely:--

- (i) all material information necessary to make the financial statements clear and understandable;
- (ii) if a fundamental accounting assumption, namely, going concern, consistency and accrual is not followed in preparation of financial statements, that fact together with the reasons therefor;
- (iii) significant accounting policies preferably in one place;
- (iv) change in an accounting policy that has material effect in the current year or may have a material effect in the subsequent years together with reasons for the change and the financial effect of the change, if material;
- (v) the basis of conversion or translation into rupees of assets and liabilities in foreign currencies and the accounting policy followed in respect of exchange, gains or losses;

- (vi) particulars of any charge on the assets of the company to secure the liabilities of any other person including, where practicable, the amount so secured;
- (vii) where determinable, the capacity of an industrial unit, actual production and the reasons for shortfall, if any, except in a case where the Authority upon an application agrees that such information need not be disclosed in the public interest;
- (viii) the general nature of any credit facilities available to the company under any contract, other than trade credit available in the ordinary course of business, and not availed of at the date of the balance-sheet.

3. Where any suppressed, concealed or unaccounted income, duty or gain has been declared, disclosed or admitted before any authority charged with the assessment or recovery of any tax, duty or gain, by or on behalf of any company, the amount, nature and financial impact thereof on the company shall be disclosed along with information as to how the directors have or purpose to treat the same in the financial statements of the company.

¹⁹[3-A. Any penalty (in terms of money or otherwise) imposed under any law by any authority shall be disclosed in the first annual report furnished after the imposition of the penalty. If as a result of any appeal, revision, petition, or review application, such penalty is reduced, enhanced or waived, the original penalty imposed shall nevertheless be disclosed, and the fact of any reduction, enhancement or waiver shall be disclosed, in the first annual report furnished after such reduction, enhancement or waiver].

4. Where any material item shown in the Financial statements or included in amounts shown therein cannot be determined with substantial accuracy, an estimated amount described as such shall be included in respect of that item together with the description of the item.

5. Except for the first financial statements laid before the company, financial statements shall also give the corresponding figures for the immediately preceding financial year. This requirement shall, in the case of companies required to prepare half-yearly financial statement shall be applicable according to the immediately preceding corresponding period.

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

7. Any information required to be given in respect of any of the items in the financial statements shall, if it cannot be included in such statements, be furnished in a separate note, schedule or statement to be attached to, and which shall be deemed to form an integral part of the financial statements.

8. The figures in the financial statements may be rounded off to the nearest thousand of rupees.

19. Paragraph (3-A) added by Notification No. S.R.O. 80(1)/84, dated 23.1.1984.

9. Where any property or asset, acquired with the funds of the company, is not held in the name of the company or is not in the possession and control of the company, this fact shall be stated: and the description and value of the property or asset, the person in whose name and possession or control it is held shall be disclosed.

10. If any loan or advances has been granted or debt allowed on terms softer than those generally prevalent in trade or any relief or concession allowed in matters of interest, repayment, security or documentation, details with reasons thereof shall be stated alongwith the nature of interest of the company or its directors or other officers.

PART II

REQUIREMENTS AS TO BALANCE SHEET

1. The assets and liabilities shall be classified under the headings appropriate to the company's business distinguishing as regards assets between fixed assets, long-term prepayments and deferred costs investments, loans and advances and current assets and as regards liabilities between share capital and reserves, long-term loans, participation term certificates, debentures and deferred liabilities and current liabilities and provisions.

FIXED ASSETS

2. (A) Fixed assets (other than investments) shall be distinguished between tangible and intangible and shall be classified under appropriate sub-head, duly itemized such as--

(i) *tangible:*

- (a) land (distinguishing between free-hold and lease-hold);
- (b) building (distinguishing between buildings on free-hold land and those on lease-hold land);
- (c) plant and machinery;
- (d) furniture and fittings;
- (e) vehicles;
- (f) capital work in progress indicating significant itemwise details;
- (g) others (to be specified);

(ii) *intangible:*

- (a) goodwill;
- (b) patents, copyright, trade marks and designs; and
- (c) others (to be specified).

(B) Under each sub-head, other than capital work in progress, the original cost or the amount of valuation, as the case may be, and the additions thereto and deductions therefrom since the date of the previous balance sheet shall be stated

and the aggregate amount written off, or provided retained up to the date of the balance sheet, by way of provision for depreciation or amortization or diminution in value shall be shown as deduction therefrom.

(C) Where sums have been written off on a reduction of capital or revaluation of assets and where sums have been added by writing up the assets, the first balance sheet subsequent to the reduction or revaluation or writing up shall show the original costs, the reduced or increased figures, as the case may be, alongwith the date and amount of the reduction or increase made, basis thereof and name and qualification of the valuer who should be an independent person competent to do so. Every balance sheet subsequent to the reduction or revaluation or writing up, shall show the year and the total amount of the reduction or revaluation or writing up and the element thereof excluded from or included in the book value of the asset.

(D) Any exchange, gain or loss in any year, as a consequence of fluctuations in rate of exchange, relative to the foreign currency borrowings out of the proceeds of which assets were acquired may be added to or deducted from the value of the respective assets and where such addition or deduction is made, the amount thereof under each sub-head shall be disclosed together with the depreciation policy thereof.

(E) In the case of a company which has been providing for depreciation or amortization or diminution in value by way of lump sum charge to profit and loss account or as appropriation of profit without allocating the amount so provided to different sub-heads the amount retained in the books of the company as provision or reserve for depreciation or amortization or diminution in value shall be allocated against the respective sub-head.

(F) In every case where the original cost cannot be ascertained without unreasonable expenses or delay, the valuation shall be the net amount at which an asset stood in the books of the company as at the end of last accounting period after deduction of the amount provided or written off for depreciation or amortization or diminution in value.

LONG-TERM INVESTMENTS

3. (A) There shall be shown under separate sub-heads the aggregate amount respectively of the company's--

- (i) investments in subsidiary companies, controlled firms, managed modarabas and other associated undertakings;
- (ii) investment in listed companies and modarabas other than those included in clause (i) above;
- (iii) investments in unlisted companies and modarabas other than those included in clause (i) above;
- (iv) investments in immovable properties;
- (v) investments in participation term certificates;

- (vi) investments in debentures and bonds issued by a Government, Municipal Committee or other local authority;
- (vii) other investments (to be specified).

(B) Under each of the sub-heads of paragraph 3 (A), where applicable there shall be stated--

- (i) the nature and extent of the investment made;
- (ii) the name of each company, modaraba, firm, Government, Municipal Committee and local authority;
- (iii) in case of shares, various classes and different paid up values together with the terms of redemption, if any, in case of preference shares;
- (iv) in case of modaraba and participation term certificates, the number of certificates and nominal value of each certificate;
- (v) in case of debentures and bonds, the terms of redemption, if any, and the rate of interest.

(C) There shall be stated under sub-head 3(A)(iii) the name of the chief executive, managing agent or modaraba company.

(D) Percentage of the equity held by the company in an investee company or modaraba or a controlled firm of other associated undertaking where it exceeds ten per cent of the investee's total equity shall be disclosed.

(E) The mode of valuation of investments, e.g. cost or market value, shall be stated separately and, if investments in listed companies or modarabas are valued otherwise than at market value: the aggregate amount of the market value thereof shall be shown. Value of investments in unlisted investees to which paragraph (D) applies, calculated by reference to net assets of the investee on the basis of the last available audited accounts in the case of unlisted companies and modarabas and the last available accounts in case of other investees together with the period of such accounts shall be disclosed.

(F) Provisions, if any, made for diminution in the value of investments and in respect of losses of subsidiary companies shall be shown as deduction from the gross amounts of the respective sub-head.

(G) Investment made against any specific fund or other item shown on the liabilities side especially those required to be made under any law shall be stated separately for each item.

LONG-TERM LOANS AND ADVANCES

4. (A) There shall be shown under separate sub-heads, distinguishing between considered good and considered bad or doubtful, aggregate amounts respectively of the company's--

- (i) loans and advances to subsidiary companies, controlled firms, managed modarabas and other associated undertakings;

- (ii) loans and advances to the directors, chief executive, managing agents²⁰[.....] and executives of the company and to any of them severally or jointly with any other person;
- (iii) other loans and advances.

(B) There shall be stated under sub-head 4(A) (i) the name of each borrower together with the amount of loans and advances, the terms of loan and advance and the particulars of collateral security held, if any.

(C) There shall be stated under sub-head 4(A) (ii) separately the aggregate amount of loans and advances to the directors, chief executive, [* * *] and executives together with the purposes for which loans and advances were made and the general terms of repayment.

(D) There shall be stated under sub-head 4(A)(iii) in respect of loans and advances, other than those to the suppliers of goods or services, the name of the borrower and term of repayment if the loan or advance is material together with the particulars of collateral security, if any.

(E) There shall be disclosed separately in respect of sub-head 4 (A) (i) and (ii) the maximum aggregate amount of loans and advances outstanding at any time since the date of incorporation or since the date of the previous balance-sheet, whichever is later, such maximum amounts to be calculated by reference to month end balance.

(F) Provision, if any, made for bad or doubtful loans and advances shall be shown as a deduction under each sub-head of paragraph 4 (A).

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

- (i) outstanding periods for exceeding three years; and
- (ii) others.

LONG-TERM DEPOSITS, PREPAYMENTS AND DEFERRED COSTS

5. (A) There shall be stated separately long-term deposits, long-term prepayments and deferred costs. Any material item shall be disclosed separately.

(B) Deferred costs shall include preliminary expenses, discount allowed on the issue of shares, if any, and expenses incurred on the issue of shares including any sums paid by way of commission or brokerage on the issue of shares, to the extent not written off or adjusted and each of these items shall be stated separately.

(C) In respect of each material item of prepayments and deferred costs, the basis on which each item is being amortized or written off shall be stated and in respect of each item of deferred costs the reasons for carrying forward such costs

20. Words omitted by Notification No. S.R.O. 859(1)/83, dated 29.8.1983.

1. Words omitted by Notification No. S.R.O. 859(1)/83, dated 29.8.1983.

shall be stated. Deferred costs shall be written off during a period not exceeding five years commencing from the financial year in which the costs were incurred.

CURRENT ASSETS

6. (A) Current assets shall be classified under sub-heads appropriate to the company's affairs, including, where applicable, the following:--

- (i) stores and spare parts distinguishing, where practicable, each from the other;
- (ii) loose tools;
- (iii) stock-in-trade, distinguishing, where practicable, between (a) stock of raw materials and components, (b) work in progress, (c) stock of finished products and (d) other stocks;
- (iv) trade debts which shall include amounts due in respect of goods sold or services rendered or in respect of other contractual obligations but shall not include the amounts which are in the nature of loans or advances. Debts considered good and debts considered doubtful or bad shall be separately stated. Debts considered good shall be distinguished between those which are secured and those for which the company holds no security other than the debtor's personal security;
- (v) loans and advances due for repayment within a period of twelve months from the date of the balance-sheet, showing separately those considered good and those considered doubtful or bad;
- (vi) trade deposits and short-term prepayments and current account balances with statutory authorities;
- (vii) bills receivable;
- (viii) marketable securities, other than long-term investments;
- (ix) interest accrued or interest outstanding;
- (x) other receivables specifying separately the material items;
- (xi) tax refunds due from Government, showing separately excise duties, customs duties, sales tax, income-tax, etc., and
- (xii) cash and bank balances, distinguishing between (a) amount in hand, (b) amount in transit, and (c) balance with banks indicating the nature thereof, e.g., on current or deposit account.

Amounts required to be kept in special or separate accounts under any law shall be shown separately.

(B) In the case of sub-heads 6 (A) (i), (ii) and (iii), the respective basis of valuation shall be stated. If the basis such as "cost", "net realisable value" or "cost or net realisable value whichever is lower" is given, there shall also be given to the extent practicable a general indication of the method of determining the "cost" or "net realisable value", e.g. "average cost", "first-in, first-out", or "last-in, first-out".

Where the basis of valuation involves departure from the recognized accounting principles, the reasons therefor alongwith financial impact.

(C) In the case of sub-heads 6 (A) (iv), (v) and (x), the following particulars shall be stated separately:--

- (a) the aggregate amount due by directors, chief executive, managing agents, [* * *] and executives of the company and any of them severally or jointly with any other person;
- (b) aggregate amount due by associated undertakings, controlled firms and managed *modarabas*;
- (c) the maximum amount of debts under each of the preceding items (a) and (b), at any time since the date of incorporation or since the date of the previous balance-sheet, whichever is the later. Such maximum amount to be calculated by reference to month-end balance.

(D) In the case of sub-head 6 (A) (viii), same information, as far as applicable, shall be disclosed as specified in paragraph 3 in respect of long-term investments.

(E) Provision, if any, made for diminution in the value of or loss in respect of any current asset shall be shown as a deduction from the gross amount of the respective asset.

(F) If in the opinion of the directors any of the current assets have, on realisation in the ordinary course of the company's business a value less than the amount at which they are stated in the financial statements, a disclosure of the fact that the directors are of that opinion together with their estimates of the realisable value and the reasons for assigning higher values in the balance-sheet shall be required.

SHARE CAPITAL AND RESERVES

7. (A) Share capital and reserves shall be classified under the following sub-heads:

- (i) paid-up capital, distinguishing between different classes of preference and equity shares and the amount paid-up in respect of each class. In the case of forfeited shares, the amount already paid thereon shall be added to the paid-up capital. Calls paid in advance shall not be added to the paid-up capital but shown separately; and
- (ii) reserves, distinguishing between capital reserves and revenue reserves, capital reserves shall include capital redemption reserve, share premium account, surplus on revaluation of fixed assets to the extent it is included in the book value of such assets, profit prior to incorporation or on the reissue of forfeited shares or any reserve not regarded free for distribution by way of dividend (to be specified), while revenue reserves shall include general reserve, dividend equalisation reserve, deferred depreciation reserve, other reserves created out of profit (to be

2. Words omitted by Notification No. S.R.O. 859(1)/83. dated 29.8.1983.

specified), and unappropriated profit (*i.e.* credit balance of profit and loss account after appropriations for the period to the date of balance-sheet). Additions to and deductions from each item of reserves shall be shown in the balance-sheet under the respective items unless they are disclosed in the profit and loss-account or a statement or a report annexed thereto. Accumulated loss adverse balance of profit and loss account--shall be shown as deduction from the capital and reserves.

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

- (i) authorised share capital, distinguishing between various classes of shares and stating the number and value of each class;
- (ii) issued share capital, distinguishing between various classes of shares and stating the number and value in respect of each class;
- (iii) subscribed share capital, distinguishing between various classes of shares and stating the number and value in respect of each class. In the case of preference shares, the rate of dividend shall also be stated;
- (iv) called up share capital, distinguishing between various classes of shares and stating the number, value and the amount called up in respect of each class;
- (v) calls unpaid as a deduction from called up share capital distinguishing calls unpaid by (a) directors (including chief executive), (b) managing agents, (c) executives and (d) others];
- (vi) paid up share capital, distinguishing in respect of each class between (a) shares allotted for consideration paid in cash, (b) shares allotted for consideration other than cash and (c) bonus shares stating the number and value of each class;
- (vii) particulars of any option on unissued shares, such as amount of option, class of shares, issue price, period during which option is exercisable, etc.;
- (viii) in the case of redeemable preference shares, the terms of redemption or conversion, if any, together with the earliest date on which the company has power to redeem or the company or the holder of the shares has power to convert the shares; and
- (ix) in the case of subsidiary companies, the number of shares of each class held by the holding company.

(C) Where circumstances permit, authorised, issued, subscribed, called-up and paid-up capital or any two or more of them may be shown as one item.

LONG-TERM LOANS

8. (A) Long-term loans shall be classified as secured and unsecured, and under each class shall be shown separately--

3. Sub. by Notification No. S.R.O. 859(1)/83, dated 29.8.1983.

- (i) loans from banking companies and other financial institutions;
- (ii) loans from subsidiary companies, controlled firms, managed *modarabas* and other associated undertakings;
- (iii) loans from directors (including chief executive), managing agents and employees of the company;
- (iv) other loans.

(B) There shall be stated in respect of each loan:--

- (a) the rate of interest;
- (b) instalments or period in which the loan has to be repaid;
- (c) where any of the long-term loans are secured otherwise than by the operation of law on any assets of the company, the fact that the loans are so secured, together with a statement of the assets upon which they are secured and where more than one class of liabilities is so secured, their relative priorities with respect to payment of interest or profit and redemption;
- (d) any other material terms.

DEBENTURES AND PARTICIPATION TERM CERTIFICATES (PTC)

9. (A) Borrowings in respect of debentures and PTC shall be separately shown classified as secured and unsecured together with a statement of the assets upon which they are secured and where more than one class of liabilities is so secured, their relative priorities with respect to payment of interest or profit and redemption shall be stated.

(B) They shall be stated in respect of each class of debentures and PTC--

- (a) the rate of interest or profit;
- (b) terms of redemption or conversion;
- (c) the earliest dates on which the debentures or PTC may be redeemed or the company or holder thereof has power to convert into shares;
- (d) particulars of any redeemed debentures or PTC which the company has power to reissue;
- (e) if any sinking fund exists.

(C) Where any of the company's debentures or PTC are held by a nominee of, or trustee for, the company, the amount thereof, calculated on the same basis as the total amount standing in the balance-sheet in respect of the debentures or PTC of that class, shall unless and until the debentures or PTC so held are reissued or cancelled, be shown as deduction from the total.

DEFERRED LIABILITIES

10. (A) Liabilities as are under recognised accounting principles appropriately classified as deferred liabilities shall be shown distinguished as--

- (a) for taxation;
- (b) for pension, gratuity and other staff benefit schemes;
- (c) other deferred liabilities showing separately (material items).

(B) Where any of the deferred liabilities are secured otherwise than by the operation of law on any assets of the company, the fact that the liabilities are so secured, together with a statement of the assets upon which they are secured, and where more than one class of liabilities is so secured, their relative priorities with respect to payment of interest or profit and redemption.

(C) Where any deferred liability is represented by accumulations which are required by law to be invested in any specific manner or kept in a special deposit or account, the same shall be shown separately indicating the mode in which it is invested, deposited or kept.

(D) Where any liability has not been fully provided for, the extent to which it has not been provided for together with the reasons thereof (showing separately the portion relating to the financial year) shall be disclosed.

LONG-TERM DEPOSITS

11. The aggregate amount of deposits classified according to nature and repayment period shall be shown alongwith rate of interest payable thereon and other material terms. Such deposit shall be classified as--

- (a) from customers;
- (b) from employees;
- (c) from others

CURRENT LIABILITIES

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

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

- (i) short-term loans, distinguishing between secured and unsecured and between loans taken from--
 - (a) banking companies and other financial institutions;
 - (b) subsidiary companies, controlled firms, managed *modarabas* and other associated undertakings;
 - (c) directors (including chief executive) and managing agents; and
 - (d) others.
- (ii) current portion of long-term liabilities;

- (iii) deposits stating separately those repayable on demand and others alongwith rate of interest payable thereon, if any;
- (iv) creditors;
- (v) accrued liabilities;
- (vi) bills payable;
- (vii) advance payments and unexpired discounts for the portion for which value is still to be given, e.g. in the case of newspapers, clubs and steamship companies;
- (viii) interest accrued on secured loans;
- (ix) interest accrued on unsecured loans;
- (x) profit accrued on PTC;
- (xi) other liabilities, if any (to be specified), e.g. unclaimed dividend, unpaid dividend;
- (xii) provision for taxation, showing separately excise duties, customs duties, sales tax, income-tax, etc.,
- (xiii) proposed dividend; and
- (xiv) other provisions and accruals for contingencies (to be specified, if material).

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

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

CONTINGENCIES AND COMMITMENTS

14. There shall be added a footnote to the balance sheet, showing separately--

- (i) arrears of fixed cumulative dividends on preference shares together with the period for which the dividends are in arrears. If there is more than one class of preference shares, the gross amount of dividends in arrears on each such class shall be stated separately;
- (ii) aggregate amount of any guarantees given by the company on behalf of the chief executive, directors, managing agents or other employees of the

company or any of them (severally or jointly with any other person), subsidiaries, associated undertakings, managed *modarabas* or any other person shall be stated separately, if material and where practicable, the general nature of the guarantee;

(iii) except where the amount of contingent loss has been accrued in the financial statements or the possibility of a loss is remote, following information regarding the existence of contingent loss:--

- (a) the nature of contingency;
- (b) the uncertain factors that may affect the future outcome;
- (c) an estimate of the amount of loss or the range of amounts of loss or a statement that such an estimate cannot be made;

Similar information regarding the existence of a contingent gain shall be provided if it is probable that the gain will be realised;

- (iv) uncalled liability on partly paid shares held as investments;
- (v) where practicable with aggregate amount or estimated amount, if it is material, of contracts for capital expenditure, so far as not provided for;
- (vi) other sums for which the company is contingently liable; and
- (vii) any other commitment, if the amount is material, indicating the general nature of the commitment.

PART III

REQUIREMENTS AS TO PROFIT AND LOSS ACCOUNT

1. The profit and loss account shall be so made out as to disclose clearly the operating results of the company during the financial year covered by the account and shall show, arranged under the most convenient heads, the gross income and the gross expenditure of the company during the financial year disclosing every material feature and in particular the following:--

- (A) (i) the turnover and showing as deduction therefrom--
 - (a) commission paid to sole selling agents;
 - (b) commission paid to other selling agents; and
 - (c) brokerage and discount on sales;
- (ii) income from investments, showing separately income from each associated undertaking and from other investments;
- (iii) income by way of interest on loans and advances and other interests;
- (iv) income arising from Participation Term Certificates;
- (v) income from *modaraba* or *modaraba* certificates;
- (vi) profit on sale of investment;
- (vii) profit on sale of fixed assets;

- (viii) income arising from unusual items;
 - (ix) income arising from prior period item; and
 - (x) other income, showing separately every material item and the nature of each such item;
- (B) (i) the value of stock-in-trade, including raw materials and components work in progress and finished products, as at the commencement and as at the end of the financial year; and
- (ii) purchase of raw materials and components and finished products;

OR

- (iii) instead of the information in (B) (i) and (ii) above, cost of raw materials and components consumed and cost of purchase finished goods sold.
- (C) expenditure on--
- (i) stores and spare parts consumed;
 - (ii) fuel and power;
 - (iii) salaries and wages including bonus, contribution to provident and other funds and expenses on staff welfare;
 - (iv) rent, municipal rates and provincial and local taxes;
 - (v) insurance;
 - (vi) repairs and maintenance; and
 - (vii) patents, copyrights, trade marks, designs, royalties and technical assistance.

(D) The aggregate amount of auditor's remuneration, whether fees, expenses or otherwise, for service rendered as auditors or in any other capacity showing separately the remuneration for services rendered as auditors and the remuneration for services rendered in any other capacity and stating the nature of such other services. In the case of joint auditors, information shall be shown separately for each of the joint auditors.

⁴[(E) Other expenses, showing separately every material item and the nature of each such item. In the case of donations where any director or his spouse has interest in the donee fund, the names of such directors and the names and addresses of donees shall be disclosed.]

- (F) (i) the amount provided for depreciation, renewals, or diminution in the value of fixed assets;
- (ii) if such provision is not made by means of a charge for depreciation, the method adopted for making such provision shall be disclosed.

- (iii) where such provision is made by means of a charge for depreciation, the value of the assets and the additions or deletions thereto, the depreciation methods and the depreciation rates used for fixed assets under each sub-head of paragraph 2 (A) of Part II of this Schedule shall be disclosed;
 - (iv) where no such provision has been made, the reasons for not making it and the amount of depreciation which should have been provided and the quantum of arrears of depreciation, if any, shall be disclosed.
- (G) (i) The amount of interest on borrowings showing separately the amount of interest on the company's debentures, on other long-term loans and on short term loans and showing by way of a note the amount of interest on borrowing from the associated undertakings, directors (including chief executive) and the managing agent, if any;
- (ii) loss on sale of investments;
 - (iii) loss on sale of fixed assets;
 - (iv) debts written-off as irrecoverable distinguishing between trade and other debts;
 - (v) provision for doubtful or bad debts distinguishing between trade and other debts;
 - (vi) provision for diminution in value of investments;
 - (vii) loss or expenses arising from unusual items and provisions therefor;
 - (viii) provision for losses of subsidiaries, controlled firms and associated undertaking: where loss is actually incurred, the extent of loss in the case of each subsidiary company, controlled firm and associated undertaking shall be disclosed by way of a note;
- (ix) (a) provision for taxation on income, capital gains and other tax or taxes, showing separately the provision for liability in respect of the profit of the financial year and the provision for liability deferred due to timing differences and distinguishing where applicable, between the provision for Pakistan taxation and the provision for taxation elsewhere;
- (b) provision for deferred liability for taxation on income for the financial year may exclude the tax effects of certain timing differences when there is reasonable evidence that these timing differences will not reverse for some considerable period (at least three years) ahead. There should also be no indication that after this period these timing differences are likely to reverse;
 - (c) where provision for taxation in respect of the profits of the period is reduced by the writing back of a part or the whole of the provision for deferred liability made in previous periods the amount written back shall be shown as deduction from the gross charge for taxation; and
 - (x) other provisions for meeting specific liabilities, contingencies or commitments (material items to be shown separately);

- (H) (i) the amount set aside or proposed to be set aside as reserves, showing separately the respective amounts in respect of each item of reserve;
- (ii) the amount of profit payable to PTC holders; and
- (iii) the amount of the dividend proposed.

2. The profit and loss arising from "hedge" and "forward" contracts, trading in "futures" and "badla (contango and backwardation)" and other transactions of a similar nature, carried forward or completed by "meeting the difference" and not resulting in actual purchase or sale of stock-in-trade shall not be deducted from or added to the cost of item (B) (ii) and (iii) in paragraph 1 of this Part, and shall be shown separately in the profit and loss account.

3. There shall be stated by way of a note the respective amounts included in item (G) (iv) and (v) of paragraph 1 of this Part for (a) debts due by the directors, chief executive, managing agents and executives of the company and any of them severally or jointly with any other person, (b) debts due by associated undertakings.

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

- (i) the aggregate amount charged in the financial statements in respect of the directors, chief executive, managing agents and executives by the company as fees remuneration, allowances, commission, perquisites or benefits or in any other form or manner and for any services rendered, and shall give full particulars of such aggregate amounts, separately for the directors, chief executive, managing agents, ⁵[* * *] and executives together with the number of such directors and executives under appropriate heads such as--
- (a) fees;
 - (b) managerial remuneration;
 - (c) remuneration or commission based on net profit or turnover;
 - (d) reimbursable expenses which are in the nature of a perquisite or benefit;
 - (e) pensions, gratuities, company's contribution to provident, superannuation and other staff funds, compensation for loss of office and in connection with retirement from office;
 - (f) commission indicating the nature thereof and the basis on which such commission is payable;
 - (g) other perquisites and benefits in cash or in kind stating their nature and where practicable, their approximate money values; and
 - (h) the amounts, if material, by which any items shown above are affected by any change in accounting policy;
- (ii) in the case of sale of fixed assets otherwise than through a regular auction made to chief executive or a director or managing agent or an executive or a share-holder holding not less than ten per cent of the voting shares of the company or any associated undertaking, ⁶[irrespective of the value of the assets and in the case of any other

5. Omitted by S.R.O. 859(I)/83, dated 29.8.1983.

6. Subs. by S.R.O. 859(I)/83, dated 29.8.1983.

person], if the book value of the asset or assets exceeds in the aggregate five thousand rupees, particulars of the assets and in aggregate (a) cost or valuation, as the case may be, (b) the book value, and (c) the sale price and the mode of disposal (e.g., by tender or negotiation) and the particulars of the purchaser.

5. The following information shall be disclosed in respect of transaction with associated undertaking showing separately the aggregate amounts of--

- (i) purchases from and sales to or goods and services;
- (ii) brokerage or discount or commission together with the nature and the basis on which such brokerage, discount or commission is payable;
- (iii) interest indicating the nature thereof; and
- (iv) any other transaction indicating the nature of every material item.

6. A company need not show the amount set aside as provisions other than those relating to depreciation, renewals or diminutor in value of assets, if, on application made by it, it has been allowed by the Authority to do so on being satisfied that the disclosure of such information would be prejudicial to the interest of the company, but shall so frame or mark the heading covering the amount of such provisions as to indicate that it has been so allowed by the Authority.

7. The profit and loss account shall be so drawn up as to dissolve separately the manufacturing, trading and operating results. In the case of manufacturing concern, the cost of goods manufactured shall also be shown. Where an undertaking has more than one [. . .] line of business the working results of such [. . .] line of business should be separately given provided the turnover of such unit or line of business exceeds twenty per cent of the total turnover of the company. Value of items exported during the financial year shall also be shown provided such value exceeds twenty per cent of the total turnover of the company.

FORM A

[See rule 12 (2-A)]

Pattern of holdings of the shares held by the share-holders as on 19

No. of share-holders	Share-holders	Total shares held
From ...	1 to 100	Shares
From ...	101 to 500	"
From ...	501 to 1000	"
From ...	1001 to 5000	"
From ...	5001 to 10000	"
From ...	10001 to above.	"

7. Words omitted by Notification S.R.O. No. 859(I)/83, dated 29.8.1983.

Categories of share-holders	Number	Shares held	Percentage
Individuals	
Investment companies	
Insurance companies	
Joint stock companies	
Financial institutions	
Modaraba companies	
Others (to be specified)	

**MONOPOLIES AND RESTRICTIVE TRADE PRACTICES
(CONTROL AND PREVENTION)
ORDINANCE, 1970**

ORDINANCE V OF 1970

An Ordinance to provide for measures against undue concentration of economic power, growth of unreasonable monopoly power and unreasonably restrictive trade practices

[Gazette of Pakistan, Extraordinary, 26th February, 1970]

Whereas the undue concentration of economic power, growth of unreasonable monopoly power and unreasonably restrictive trade practices are injurious to the economic well-being, growth and development of Pakistan;

And whereas it is expedient to provide for measures against such concentration, growth and practices and for matters connected therewith or incidental thereto;

And whereas the national interest of Pakistan in relation to the economic and financial stability of Pakistan requires '[Federal] legislation in the matter;

Now, therefore, in pursuance of the Proclamation of the 25th day of March, 1969, read with the Provisional Constitution Order, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:--

1. **Object of Ordinance.** Avoidance of undue concentration of economic power and detriment factor in ownership or control of shares and their voting power is the object and scope of the Ordinance.² The Ordinance aims at breaking monopolies and avoiding undue concentration of economic power. One mode of avoiding undue concentration of economic power is to break or at least weaken such associations which are commonly managed but have semblance of separate entities.³

The purpose of the Ordinance is to eradicate three 'vices' from the economic structure of our society, namely (i) undue concentration of economic power, (ii) growth of unreasonable monopoly power and (iii) unreasonably restrictive trade practices. It may or may not be possible to rid the economic life of this country completely of these three diseases but the Ordinance undoubtedly seeks to curb them as far as possible. A close scrutiny of the Ordinance will show that the three

1. Subs. by P.O. 4 of 1975.

2. 1986 CLC 2764.

3. 1986 CLC 2489 (DB).

problems identified therein have not been treated at par. It may be noted that in the definition clause the expression "economic power" or "concentration of economic power" does not figure. On the other hand "Monopoly Power" has been defined although the definition does not say when a certain monopoly power becomes an unreasonable monopoly power, while not only "trade" and "trade practices" have been separately defined but even the meaning of "unreasonably restrictive trade practices" has been explained in the definition clause. This is one aspect of the differential treatment accorded to the economic power, the monopoly power and the restrictive trade practices.⁴

CHAPTER I PRELIMINARY

1. *Short title, extent and commencement.* (1) This Ordinance may be called the Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970.

(2) It extends to the whole of Pakistan.

(3) It shall come into force on such date as the ⁵[Federal Government] may, by notification in the official Gazette, appoint.

1. *Scope.* The Ordinance is intended to provide measure against undue concentration of economic power, growth of unreasonable monopoly power and unreasonably restrictive trade practices to secure national interest of Pakistan in relation to its economic and financial stability.⁶

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

(a) "agreement" includes any arrangement or understanding whether or not in writing and whether or not it is or is intended to be legally enforceable;

(b) "associated undertakings" means any two or more undertakings interconnected with each other in the following manner, namely:--

(i) if a person who is the owner or a partner, "[* * * *]" of an undertaking or who directly or indirectly holds or controls shares carrying not less than ⁸[Thirty] per cent. of the voting power in such undertaking, is also the owner or a partner, "[* * * *]" of another undertaking or, directly or indirectly, holds or controls shares carrying

4. PLD 1976 Lah. 834 = PLJ 1977 Lah. 732.

5. Subs. by P.O. 4 of 1975.

6. PLJ 1987 SC 220 = PLD 1987 SC 202.

7. Omitted by Ord. 26 of 1980, S.2.

8. Subs. by Ord., 26 of 1980, S.2.

not less than *⁹[Thirty] per cent. of the voting power in that undertaking *⁹[or].

- (ii) if the undertakings are under common management or **common control** or one is the subsidiary of another;

1. **Scope.** Sub-clauses (i) & (ii) of S. 2 (1)(b) of Ordinance V of 1970, are not conjunctive but disjunctive.¹⁰ Therefore, provisions of S. 2 (i) of the Ordinance of 1970 deal with such conditions where a person being owner, partner, officer or director of two undertakings joins undertakings as associated undertaking. Provisions of sub-cl. (ii) of S. 2 of the Ordinance would, however, contemplate such situations when two undertakings are at a common management or control or one is subsidiary to the other,¹¹ and it defines different situations which could lead to inter-connection between two or more undertakings bringing them within the definition of "associated undertakings".¹²

Associated undertaking. Inter-connection of undertakings and interlocking thereof with each other through common directors being responsible in converting major units into closed concerns resulting in concentration of economic power in few hands, was the motivating force for promulgation of Ordinance V of 1970 to remedy such situation.¹³

- (c) "Authority" means the Monopoly Control Authority constituted under section 8;

- (d) "control", in relation to an undertaking, means the power to exercise a controlling influence over the management or the policies of the undertaking, and, in relation to shares, means the power to exercise a controlling influence over the voting power attached to such shares;

- (e) "individual" includes a Hindu undivided family;

1. **Scope.** "Individual" would be deemed to own, hold or control apart from his own, shares held by his spouse, brother, sister, lineal ascendants or lineal descendants. Where shares held by such category of relations exceed fifty per cent of voting power, registration as per requirements of Ordinance V of 1970 would be imperative if total value of assets is not less than Rs. one crore.¹⁴

- (f) "market", in relation to any goods or services, means the geographic region in which competition in the production or sale of such goods or the provision of such services takes place;

9. Subs. by Ord., 26 of 1980, S. 2.

10. 1986 CLC 2867 + 1986 CLC 2490 + 1986 CLC 2757.

11. 1986 CLC 2489 (DB).

12. 1986 CLC 2757.

13. 1986 CLC 2757.

14. 1986 CLC 2744 (DB) (MCA).

- (g) "monopoly power" means the ability of one or more sellers in a market to set non-competitive prices or restrict output without losing a substantial share of the market or to exclude others from any part of that market;
- (h) "price", in relation to the sale of any goods or to the provision of any services, includes every valuable consideration, whether direct or indirect which in effect relates to the sale of any goods or the provision of any services;
- (i) "retailer", in relation to the sale of any goods, means a person who sells the goods to any other person otherwise than for re-sale;
- (j) "service" means provision of board, lodging, transport, entertainment or amusement, or of facilities in connection with the supply of electrical or other energy, purveying of news, banking, insurance or investment;
- (k) "trade" means any business, industry, profession or occupation relating to the production, supply or distribution of goods or the control of production, supply or distribution of goods, or to the provision or control of any service;
- (l) "trade practice" means any act or practice relating to the carrying on of any trade or business;
- (m) "undertaking" means any concern, institution, establishment or enterprise engaged in the production, supply or distribution of goods, or in the provision of control of any service;

Synopsis

1. Scope.

2. Undertaking with foreign branches.

1. **Scope.** Overseas Bank providing "service" in form of banking while Insurance Company in form of insurance would be included within the definition of word "service" and may be termed as "undertaking".¹⁵

2. **Undertaking with foreign branches.** An undertaking incorporated in Pakistan having branches in foreign countries is governed by Ordinance V of 1970. Habib Bank (Overseas) Ltd. though having branches in foreign countries, its

15. 1988 CLC 2489 (DB).

operation being controlled through Head Office in Pakistan, would be an undertaking as defined in S. 2 (1)(n).¹⁶

- (n) "unreasonably restrictive trade practice means a trade practice which has or may have the effect of unreasonably **preventing**, **restraining** or otherwise lessening competition in any manner;
- (o) "value of assets," in relation to an undertaking, means the value of assets of the undertaking at cost less depreciation at the normal rates at which depreciation is calculated for purpose of assessment of income-tax;

1. **Scope.** The word "assets" has to be given its ordinary meaning, and not to be understood as having any extended meaning which the word "includes" conveys. It is generally used in collective plural, and in commercial law it denotes the aggregate of available property, stock in trade, cash etc, belonging to a merchant or mercantile company (Black's Law Dictionary, Revised Fourth Edition, p. 151). It is also used to signify the means which a person or a bank or a corporation has as compared with his/its liabilities, that is, its identity is separate and is not inclusive of debts or liabilities but is only comparable to them. It is in this sense that the word "assets" has been used to denote a "complete whole" of the property. Any other meaning given to it will be against the verbal expression of the legislature, and would defeat the very purpose of the legislation.¹⁷ Therefore phrase "value of assets" would mean value of all assets including fixed and current assets as reduced by depreciation allowance which had to be worked out at normal rates for purposes of income-tax assessment. Liabilities could not be deducted from assets for determining value of assets.¹⁸

Depreciation of assets. Depreciation is allowed at normal rates at which depreciation is calculated for purposes of assessment of income-tax only for assets which are depreciable. Such depreciation would be in respect of fixed assets forming only one part of total assets.¹⁹ Depreciation, would be at normal rate for purposes of assessment of income-tax excluding therefrom such depreciation for double and triple shifts working. Extra allowance up to fifty per cent of normal allowance on account of double shift working and hundred per cent of normal allowance on account of triple shift working could be granted. Such extra-allowance would be proportionate to number of days during which double or triple shifts were worked. Value of assets of an undertaking at cost would be governing fact whereas depreciation as calculated for purposes of income-tax was merely a concession in respect of valuation of fixed assets forming only one part of assets. **Assets of an undertaking** which commands and exercises influence on market leading to concentration of economic power in few hands, would not be by its fixed assets only but total value of all its assets including machinery plant, investments and liquidity of cash. Current assets form important element in

16. 1986 CLC 2867.

17. PLJ 1987 SC 220 = PLD 1987 SC 203. (1986 CLC 2739 is no more good law).

18. 1986 CLC 2881 (FB) (MCA) + 1981 CLC 2240.

19. 1986 CLC 2744 (DB) (MCA).

calculation of total value of assets of a private limited company which would attract provisions of Ordinance, V of 1970 which refers to total value of assets and not to fix assets only.²⁰

'Fixed' and 'current' assets. Term 'value of assets' means total assets and not fixed assets alone.¹ "Current assets" which are generated by "fixed assets" while going into market attract wealth and add to concentration of economic power of undertaking. Scheme of Ordinance, V of 1970 shows that it would not be possible to confine word "assets" to fixed assets only.² Fixed assets depreciate and are liable to be written off, in course of time. It is, through investment in current assets that in long run fixed assets are replaced or increased. Additional fixed assets also come from only cash earnings during the course of business and ploughed back into the undertaking forming part of total value of assets. In balance-sheet of every business concern, current assets and investments are shown on asset side as without them real financial position of undertaking would not be available and soundness thereof, could not be judged.³

- (p) "wholesaler," in relation to the sale of any goods, means person who purchases goods and sells them to any other person for re-sale; and
- (q) "words and expressions" used but not defined in this Ordinance and defined in the Companies Act, 1913 (VII of 1913), have the meanings respectively assigned to them in that Act.
- (2) For the purposes of this Ordinance an individual shall be deemed to own, hold or control a thing if it is owned, held or controlled by the individual or his spouse, or by a brother or sister of the individual or by any of the lineal ascendants or descendants of the individual.

1. Scope. The word "individual" would be deemed to own, hold or control a thing if it was owned, held or controlled by individual or his spouse or by brother or sister of individual or by any of lineal ascendants or descendants of individual. Judicial person like limited company would not be "individual" for the purposes of Ordinance, V of 1970.⁴

CHAPTER II

UNDUE CONCENTRATION OF ECONOMIC POWER, ETC., PROHIBITED

3. *Undue concentration of economic power, etc., prohibited.*
There shall be no undue concentration of economic power,

20. 1986 CLC 2728 (DB) (MCA).

1. 1986 CLC 2254 (FB) (MCA).

2. 1986 CLC 2240.

3. 1986 CLC 2744.

4. 1986 CLC 2252 + PLD 1986 Lah. 346 = PLJ 1986 Lah. 408.

unreasonable monopoly power or unreasonably restrictive trade practices.

Synopsis

- | | |
|--|---|
| 1. Scope. | 3. Fixation of price of goods produced. |
| 2. Restriction of area of sale of product. | 4. Reduction of share holding. |

1. **Scope.** The purpose of the Ordinance is stated in section 3 thereof which prohibits undue concentration of economic power, un-reasonable monopoly power, and unreasonably restrictive trade practices because these factors give rise to uneven distribution of wealth amongst different sections of society, ultimately leading to unrest, strife and conflict amongst them, thereby retrading economic growth and impairing its general welfare. To achieve this object the Ordinance creates a body known as Monopoly Control Authority which administers this law and in that context exercises many powers and performs various functions. The first step in this direction is the collection of necessary information and data from those engaged in business and commerce in the private sector and that is done through the process of registration as embodied in section 16 of the Ordinance and the rules made thereunder. After completing this step, the Authority begins the process of inquiry and if it prima facie finds that the provisions of section 3 have been or are likely to be contravened it passes an order under section 12 after following the procedure laid down in section 11 and keeping in view the guidelines given in sections 4, 5 and 6 of the Ordinance.⁵

Economic power. Assets in their entirety are to be taken into account for determining economic power of undertaking.⁶ The assets of undertaking and its exercise of influence in market leading to concentration of economic power in few hands, would not be by its fixed assets only but by total value of all its assets including machinery, plant, building investments and liquidity of cash. Current assets would give flexibility to exercise of economic power and lead to manipulation of market. Such current assets would thus form a major part of total value of assets of a company whether private limited or public limited, attracting provisions of Ordinance, V of 1970.⁷

Total share holding of individual to be considered. Individual's shareholding in an associated undertaking which in turn has shares or controlling shares in another undertaking in which concentration of economic power occurs, would have to be taken into consideration while dealing with the term 'individual'. Totality of shareholdings of individual would have to be taken into account. Such shares though held in a corporate body and re-invested in another undertaking would have to be taken into account for determining final percentage of

5. 1990 CLC 1008.

6. PLJ 1987 SC 220 = PLD 1987 SC 202.

7. 1986 CLC 2744 (DB).

controlling shares in any particular undertaking which was a subject-matter before authority.

2. **Restriction of area of sale of product.** Where agreement by undertaking for sale of products specifies particular area within which products of undertaking are to be sold. It may have effect of unreasonably preventing, restraining or otherwise lessening competition and constitute unreasonably restrictive trade practices. But if Authority is satisfied that area restriction provided for in agreement would have effect of achieving efficiency in distribution in specified area. Such benefits of efficiency would outweigh any adverse effects of restrictive clause. Authority allowed retention of such clause in agreement.⁹

3. **Fixation of price of goods produced.** Where there was an agreement for sale of products specifying sale of goods to established independent dealers at wholesale prices fixed by undertaking. Authority directed undertaking to modify such clause of agreement so as to indicate clearly that price fixed by undertaking was maximum price and distributors were at liberty to sell goods at a price lower than that fixed by undertaking.¹⁰

4. **Reduction of shareholding.** Where for removal of undue concentration of economic power although percentage of shareholding which would be ordered to be sold is not prescribed, yet letter and spirit of law, would indicate that for removal of undue concentration of economic power, same should not be technical reduction by .01% below 50 per cent. Fifty per cent voting power having been prescribed in relation to controlling shares, reduction thereof to 49.99 per cent would not be sufficient to negative concentration of economic power in relation to undertaking. Further reduction in such shareholding would be legally called for.¹¹

4. *Circumstances constituting undue concentration of economic power.* Undue concentration of economic power shall be deemed to have been brought about, maintained or continued if--

- (a) there is established, run or continued an undertaking the total value of whose assets is not less than ¹²[fifty million] or such other amount as the Authority may by rule prescribe, and which is--
 - (i) not owned by a public company, or
 - (ii) is owned by a public company in which any individual holds or controls shares carrying not less than fifty per cent, or such other percentage as the Authority may by rule prescribe; of the voting power in the undertaking;

8. 1986 CLC 2764.

9. 1986 CLC 2762 (FB).

10. 1986 CLC 2762 (FB).

11. 1986 CLC 2764.

12. Subs. by Ord., 16 of 1982, S. 2.

- (b) there are any dealings between associated undertakings which have or are likely to have the effect of unfairly benefiting the owners or share-holders of one such undertaking to the prejudice of the owners or share-holders of any other of its associated undertakings.

Synopsis

1. Scope.
2. Undue concentration of economic power--determination of.
3. Public interest to be considered.

1. **Scope.** Generally the industrial concentration of economic power amongst others is to be judged in terms of its size, that is, assets, employment and output, and this concept is notably apparent from the above consideration. The size is reflected alone by the value of assets of the undertaking which significantly denotes embodiment of economic power and when it obtains the optimum of the statutory limit then by legal fiction, undue concentration of economic power is brought about, maintained or continued and it then becomes objectionable because of the anticipated evil consequences of such concentration. The size has, therefore, direct nexus with the concentration of economic power irrespective of its obligations for if that was to be taken into consideration then the undertaking, though it may be possessed of tremendous economic power holding a top monopoly position, would not yet come within the scope of the enacted provision as to its size. This would be against the purpose of the Ordinance itself and the concept of size as an embodiment of the concentration of economic power qua its assets, employment and output.¹³ "Concurrent assets" which are generated by "fixed assets" while going into market attract wealth and add to concentration of economic power of undertaking. Scheme of Ordinance, V of 1970 shows that it would not be possible to confine word "assets" to fixed assets only.¹⁴

Total value of assets. The word "total" occurring in section 4(a)(i) of the Ordinance is prefixed before the term "value of whose assets" which in the ordinary English language means: whole; complete; including all; co-ordinating everything towards one end. This also reflects the entirety of the assets whose value has to be reckoned in order to determine the size of the undertaking as whether it qualifies for the statutory action. This being so, it is difficult to accept that the term "value of assets" should be given a limited meaning. Total value of assets being different from net worth of undertakings, deduction of liabilities, could take place only when net worth is calculated.¹⁵

Company. The word "individual" in section 4(a)(ii) does not include a company.¹⁶

2. **Undue concentration of economic power--determination of.** For the purpose of determination of undue concentration of power the words cash at cost

13. PLJ 1987 SC 220 = PLD 1987 SC 202.

14. 1986 C.L.C. 2240 (FB) (MCA).

15. 1986 C.L.C. 2744 (DB) (MCA).

16. PLD 1986 Lah. 346 = PLJ 1986 Lah. 408.

has no other significance but that it is referable to its face value. And as to the value of the stock in trade, even though it fluctuates, it has to be computed on a fixed date at cost according to the rules framed under the Ordinance or, in any case, even under the recognized method of accounting, the value has to be determined at cost or market price on a fixed date to ascertain profit and loss. The interpretation is wholly consistent with the size referable in terms of the value of assets, and equally satisfies the test.¹⁷

3. **Public interest to be considered.** On discovery of a case of undue concentration of economic power under S. 4(a)(i) or 4(a)(ii) it is not mandatory for the Authority, to take action under S. 12 (1)(a)(i) or S. 12 (1)(a)(ii), irrespective of all consequences. It may be done only when it is necessary to do so in public interest. If such was the intention of the legislature, then there was no need of having section 11. The word "may" in section 11 also shows that the power is enabling and to be used when necessary, in the public interest.¹⁸

5. *Circumstances constituting unreasonable monopoly power.* (1) Unreasonable monopoly power shall be deemed to have been brought about, maintained and continued if--

- (a) there has been created or maintained any such relationship between two or more undertakings as makes them associated undertakings where they are competitors in the same market and together produce, supply, distribute or provide not less than ¹⁹[one-third] of the total goods or services in such market;
- (b) there has been any acquisition by one person or undertaking of the stock or assets of any other person or undertaking or any merger of undertakings, where the effect of the acquisition or merger is likely to create monopoly power or to substantially lessen competition in any market, including any acquisition which creates any such relationship as is referred to in clause (a);
- (c) any loan is granted by a bank or insurance company to any of the associated undertakings of amounts greater or on terms more favourable than for loans made available to other undertakings in comparable situations, or any loan is granted by a bank or insurance company to a person or undertaking not associated with it on the condition or understanding that the borrower or any of its associated undertakings will make any loan to a person or undertaking associated with the lender.

17. PLJ 1987 SC 220 = PLD 1987 SC 202.

18. PLD 1986 Lah. 346 = PLJ 1986 Lah. 408 = NLR 1987 AC 227.

19. Subs. by Ord., 26 of 1980; S. 4.

(2) No such relationship, acquisition, merger or loan as is referred to in sub-section (1) shall be deemed to have the effect of bringing about, maintaining or continuing unreasonable monopoly power if it is shown--

- (a) that it contributes substantially to the efficiency of the production or distribution of goods or of the provision of services or to the promotion of technical progress or export of goods;
- (b) that such efficiency or promotion could not reasonably have been achieved by means less restrictive of competition; and
- (c) that the benefits of such efficiency or promotion clearly outweigh the adverse effect of the absence or lessening of competition.

6. *Unreasonably restrictive trade practices.* (1) Unreasonably restrictive trade practices shall be deemed to have been resorted to or continued if there is any agreement--

- (a) between actual or potential competitors for the purpose of having the effect of--
 - (i) fixing the purchase or selling prices or imposing any other restrictive trading conditions with regard to the sale or distribution of any goods or the provision of any services;
 - (ii) dividing or sharing of markets for any goods or services;
 - (iii) limiting the quantity or the means of production, distribution or sale with regard to any goods or the manner or means of providing any services;
 - (iv) limiting technical development or investment with regard to the production, distribution or sale of any goods or the provision of services;
 - (v) excluding by means of boycott any other person or undertaking from the production, distribution or sale of any goods or the provision of any services;
- (b) between a supplier and a dealer of goods fixing minimum resale prices, including--
 - (i) an agreement with a condition for the sale of goods by a supplier to a dealer which purports to establish or provide

for the minimum prices to be charged on the resale of the goods in Pakistan; or

- (ii) an agreement which requires as a condition of supplying goods to a dealer to the making of any such agreement;
- (c) which subjects the making of any agreement to the acceptance by suppliers or buyers of additional goods or services which are not by their nature or by the custom of the trade, related to the subject-matter of such agreement.

(2) No such agreement as is referred to in sub-section (1) shall be deemed to constitute an unreasonably restrictive trade practice if it is shown--

- (a) that it contributes substantially to the efficiency of the production or distribution of goods or of the provision of services or to the promotion of technical progress or export of goods;
- (b) that such efficiency or promotion could not reasonably have been achieved by means less restrictive of competition; and
- (c) that the benefits from such efficiency or promotion clearly outweigh the adverse effect of the absence or lessening of competition.

1. **Scope.** If a registered agreement comes within the ambit of S. 6(2), which embodies exceptions to S. 6 (1) then that would not be violative of S. 31 and no further action under S. 11 and S. 12 will be required in respect thereof. After the first stage of registration for the purpose of collection of necessary information and relevant data is over, Authority shall commence the second stage in the procedure of registration and finalise the matter in accordance with law.²⁰

7. *Other circumstances constituting concentration of economic power, etc.* (1) Without prejudice to the provisions of sections 4, 5 and 6, the Authority may by General Order prescribe the circumstances in which and the conditions under which undue concentration of economic power or unreasonable monopoly power shall be deemed to exist and the practice which shall be deemed to be unreasonably restrictive trade practice.

(2) Where the Authority is of opinion that, the making of a General Order under sub-section (1) may be in the public interest,

it shall conduct an inquiry affording the persons or undertakings likely to be affected by such Order such opportunity of being heard and of placing before it relevant facts and material as it may deem fit.

(3) Before making any General Order under sub-section (1), the Authority shall--

- (a) publish in the official Gazette and in such other manner as in its opinion will bring it to the notice of all persons and undertakings likely to be affected thereby a draft of the proposed General Order together with a notice inviting suggestions or objections to be submitted before a date specified therein;
- (b) consider any objection or suggestion which may be received by it from any person or undertaking with respect to the draft; and
- (c) where it deems appropriate, afford an opportunity to any such person or undertaking of being heard and of placing before it facts and material in support of the objection or suggestion.

Synopsis

1. Scope.
2. General order, procedure for making.
3. Delegation of powers by legislature to Authority.

1. **Scope.** The Authority has been clothed with powers to declare circumstances the existence of which would be deemed to constitute unreasonably restrictive trade practices and the same may be besides those already referred to in section 6. Headings prefixed to sections or sets of sections may act as guide to ascertain the intention of the Legislature when some ambiguity arises in respect thereof. However, the power conferred on the Authority by section 7 of the Ordinance is not an unrestricted power, but the same is restricted by the definition of the term "unreasonably, restrictive trade practice" and the Authority, without any doubt, is to be guided by the yardstick provided by the definition. It was not possible for the Legislature to itself ascertain circumstances or conditions which might have constituted unreasonably restrictive trade practices. Therefore, the Legislature in its own wisdom entrusted such functions to the Authority. The power exercised by the Authority, therefore, does not transgress in any manner the limits circumscribed by law. Section 6 is not exhaustive and the Authority can

still identify and declare circumstances or conditions which may have the effect of unreasonable restricting or lessening competition.¹

2. General order, procedure for making. While empowering the Authority to prescribe circumstances or conditions constituting unreasonably restrictive trade practices, the Ordinance prescribes a complete procedure which the Authority has to follow while acting under that section. A minute examination of the provisions of section 7 would show, that before passing an order under subsection (1) thereof the Authority if satisfied that making of General Order under subsection (1) may be in the public interest, it shall conduct any inquiry. Subsection (2) of section 7 further enjoins upon the Authority to provide to such persons or undertakings likely to be affected by the General Order such opportunity of being heard and placing before it relevant facts and material as the Authority may deem fit. The purpose of such preliminary inquiry appears to be to enable the Authority to identify circumstances which may necessitate making of a General Order after the Authority has formed a tentative opinion in that behalf. Subsection (2) and (3) of section 7 make it clearly manifest that the Legislature has contemplated two enquiries, first before making of draft General Order and second thereafter. Again the different language used by the Legislature in subsections (2) and (3) clearly shows that providing of opportunity of being heard and placing relevant facts and material before the Authority contemplated under subsection (2) of section 7 is of mandatory nature. Contrary to that subsection (3) of section 7 makes it discretionary for the Authority to afford such an opportunity to the affected parties. Any deviation from such procedure would render a subsequent proceedings illegal and without jurisdiction. But where concerned party itself failed to appear before Authority on date fixed for purpose of hearing and the Authority in exercise of its discretion did not deem fit to grant adjournment. Party in fact sent its objection to the Authority. Provisions of section 7(2) of the Ordinance, were held to be sufficiently complied with by the Authority.²

General order and order under sections 11 and 12--distinction. A General Order as contemplated by section 7 of the Ordinance cannot be similar in terms to an order issued under sections 11 and 12 of the Ordinance. That is because under section 7 the Authority is only empowered to prescribe circumstances or conditions which may constitute unreasonably restrictive trade practices. Section 3 of the Ordinance, *inter alia*, provides that there shall be no unreasonably restrictive trade practices. A perusal of section 11 of the Ordinance would show that the same may be pressed into service when the Authority is satisfied that there has been or is likely to be a contravention of the provisions of section 3 of the Ordinance and that action is necessary in public interest. It is, therefore, clear that a General Order, as envisaged under section 7 and an order envisaged under sections 11 and 12 cannot be similar in terms but has to be distinct in both its form and substance. The General Order in question makes it sufficiently clear that what it provides for therein is, that an arrangement or agreement for distribution of any goods which is not in accordance with certain conditions as specified therein by the Authority shall be deemed to be unreasonably restrictive trade practices. The

1. PLD 1986 Kar. 452 = NLR 1986 UC 552 (DB).

2. PLD 1986 Kar. 452 = NLR 1986 UC 552 (DB).

order then further proceeds to set forth those conditions which would be deemed to be unreasonably restrictive trade practices. This order, therefore, makes it manifestly clear that both according to its form and substance, the same only prescribes the circumstances or conditions under which certain practices would be deemed to be unreasonably restrictive trade practices. Therefore, it nowhere appears from the General Order that the same contains directions as contemplated by sections 11 and 12 of the Ordinance.³

3. Delegation of powers by legislature to Authority. The only discretion left with the Authority is to decide whether any restrictive trade practice as defined in clause (n) of section 2 is reasonably restrictive or unreasonably restrictive. It was not possible for the Legislature to carry out a survey of all the restrictive trade practices prevalent in the country or to imagine all the possible restrictive trade practices likely to be resorted to in future and classify, them into 'reasonable' and 'unreasonable' categories. The Legislature was, therefore, perfectly justified in leaving the question to be decided by a body of experts in case of each industry and each situation. In view of the present day complexities of the socio-economic life of our country such delegation, in the restricted manner explained above, has to be permitted. In view of the construction to which section 7 is susceptible it does not purport, to delegate essential legislative power to the Monopoly Control Authority.⁴

CHAPTER III

MONOPOLY CONTROL AUTHORITY

8. *Constitution of Authority.* (1) For the purposes of this Ordinance the '[Federal Government] shall, by notification in the official Gazette, constitute a Monopoly Control Authority consisting of not less than three members appointed by it one of whom shall be appointed to be the Chairman.

(2) No person shall be appointed as, or continue to be, a member of the Authority if he has or acquires any such financial or other interest as is likely to affect prejudicially his functions as such member.

(3) No member of the Authority shall assume his office until he has made such declaration affirming secrecy and fidelity as may be prescribed.

(4) A member of the Authority shall hold office for a period of five years unless he earlier resigns or otherwise ceases to hold office '[or being a person in the service of Pakistan retires from such service].

3. PLD 1986 Kar. 452 = NLR 1986 UC 552 (DB).

4. PLD 1976 Lah. 833 = PLJ 1988 Lah. 732.

5. Subs. by P.O. 4 of 1975.

6. Added by Ord. 56 of 1981. S. 2.

(5) A casual vacancy in the office of a member caused by death, resignation or otherwise shall be filled for the remainder of the term of such member by the appointment of another person.

(6) No act or proceeding of the Authority shall be invalid by reason only of ⁷[the absence of a member or] the existence of any vacancy among its members or any defect in its constitution.

⁸[(7) The Authority may from time to time delegate all or any of its powers and functions to any two of its members].

Synopsis

1. Number of members of Authority.
2. Biased member.

1. **Number of members of Authority.** Provisions of subsections (1) & (6) of section 8 of Monopolies and Restrictive Trade Practices (Control & Prevention) Ordinance, 1970 are neither in conflict with nor controlled by each other. Purport of each provision being independent even if two provisions are read together, the inescapable conclusion would be that Monopoly Control Authority would consist of minimum of three members, although a lesser number of members could sit to decide a particular case. By mere reason of three members not being deciding members, the validity of decision, would not be affected.⁹

2. **Biased member.** Where Chairman of Authority had been rendered disqualified on account of his bias, malice and interest. The order of the Authority would merit setting aside being violative of principle that a person cannot be a Judge in a cause in which he is interested.¹⁰

9. *Appointment of officers by the Authority.* The Authority may appoint such officers and servants on such terms and conditions as it may determine.

CHAPTER IV

FUNCTIONS AND POWERS OF THE AUTHORITY

10. *Functions of the Authority.* The functions of the Authority shall be--

- (a) to register undertakings, individuals and agreements;
- (b) to conduct enquiries into the general economic conditions of the country with particular reference to the concentration of economic power and the existence or growth of monopoly power and restrictive trade practices;

7. Added by Ord., 26 of 1980, S. 5.

8. Added by Ord., 26 of 1980, S. 5.

9. 1986 CLC 2489 (DB).

10. NLR 1992 CLJ 84.

- (c) to conduct such enquiry into the affairs of any undertaking or individual as may be necessary for the purposes of this Ordinance;
- (d) to give advice to persons or undertakings asking for the same as to whether any actions proposed to be taken by such person or undertaking are consistent with the provisions of this Ordinance, or any rules or orders made thereunder;
- (e) to make recommendations to the "[Federal Government] or a Provincial Government or to the appropriate authority or officer of such Government for suitable governmental actions to prevent or eliminate undue concentration of economic power, unreasonable monopoly power or unreasonably restrictive trade practices; and
- (f) to make such orders and to do all such things as are necessary for carrying out the purposes of this Ordinance.

Synopsis

1. Scope.
2. Powers of Authority.
3. Functions of Authority.

1. **Scope.** On the question of requirement of registration an overseas Bank was required, in case of doubt, to seek advice of Monopoly Control Authority. The Bank not only failed to seek advice but on demand of Authority to get registration failed to comply with such direction. Absence of registration would be deemed to be wilful.¹¹

2. **Powers of Authority.** The Authority is empowered to make such orders and to do all such things as are necessary for carrying out purposes of Ordinance. It has vast powers to call upon any person to furnish information and to produce documents.¹²

3. **Functions of Authority.** The mere fact that the word 'deemed' used in section 7 does not, for the reasons already recorded above and in view of the construction placed on that section, convert the function to be performed by the Authority thereunder into a legislative function. All that the Authority is in fact required to do is to carry out research, conduct inquiries and make intensive and extensive studies of the trade practices in our country in order to identify such practices as may be hit by section 3 of the Ordinance.¹⁴

11. *Proceedings in case of contravention of section 3.* (1) Where the Authority is satisfied that there has been or is likely to be a

11. Subs. by P.O. 4 of 1975.

12. 1986 CLC 2489 (DB).

13. 1986 C.L.C 2878.

14. PLD 1976 Lah. 833 = PLJ 1977 Lah. 732.

contravention of the provisions of section 3 and that action is necessary in the public interest, it may make one or more of such orders specified in section 12 as it may deem appropriate.

(2) Before making an order under sub-section (1), the Authority shall--

(a) give notice of its intention to make such order stating the reasons therefor to such persons or undertakings as may appear to it to be concerned in the contravention to show cause on or before date specified therein as to why such order shall not be made; and

(b) give the persons or undertaking an opportunity of being heard and of placing before it facts and material in support of their contention.

(3) An order made under sub-section (1) shall have effect notwithstanding anything contained in any other law for the time being in force or in any contract or memorandum or articles of association.

Synopsis

1. Scope.

2. Public interest to be considered.

3. Show-cause notice.

1. **Scope.** In case of undue concentration of economic power Authority can pass order requiring a company to be converted into a public company within such time and in such manner as may be specified in the order. Provisions of S. 11(3) protect such order from repugnancies or conflicts from any other law for the time being in force. No contract memorandum or articles of association of a company or situation as between shareholders can bar course of Authority from proceeding to pass order under S. 12(1)(a)(i).¹⁵ But *non obstante* clause contained in sub-section (3) of S. 11 giving overriding effect to order of Authority notwithstanding anything contained in any other law for the time being in force, does not enable Authority to gratuitously extend its power of ordering disinvestment which otherwise is available to other authorities or departments of Government. Authority cannot arrogate to itself power of disinvestment, either by pretending it has such power which it does not have, or on any equitable basis, by compelling Companies to accept consent orders and thus save themselves from having their orders set aside by High Court.¹⁶ Private undertaking whose assets exceed Rs. one crore in its balance-sheet for one accounting year, would be liable to registration. Avoidance of registration for considerable long time would amount to wilful default leaving no mitigating circumstance in such undertaking's favour. Heavy

15. 1986 C.L.C 2885.

16. N.L.R 1987 AC 227 = PLJ 1986 Lah. 408 = PLD 1986 Lah. 346.

penalty was imposed and undertaking ordered to get itself registered by a specified date.¹⁷

2. Public interest to be considered. Under S. 11, where the Authority is satisfied that there is or likely to be a contravention of the provisions of section 3 and that action is necessary in the public interest, it may make one or more of such orders specified in section 12, as it may deem appropriate. In view of the language of this subsection, it is clear that the Authority should first find as a fact that action is necessary in the public interest. The determination of this question is a subjective one, but the material on which the decision must be based must come from sources *aliunde* which objectively show that the making of the order under section 12 would serve the "public interest". Public interest does not necessarily imply the interest of the shareholders, though it may be one of the factors which the Authority may take into consideration when passing an order under section 12. In these circumstances, it cannot be said that no sooner a case of undue concentration of economic power under section 4(a)(i) or 4(a)(ii) is made out, that blindly the Authority must straightaway proceed to issue a notice under section 11 for proposed order under section 12(1)(a)(i) or 12(1)(a)(ii) of the Ordinance respectively.¹⁸

3. Show-cause notice. Partnership firm or a private limited company having assets over five crores of rupees is deemed to have undue concentration of economic power. Such company or firm can lead to an order under S. 12(1)(a)(i), if action is considered necessary in public interest under S. 11(1) and notice of action proposed to be taken is given under S. 11(2).¹⁹

12. Order of the Authority. (1) An order of the Authority under section 11 may,—

- (a) in the case of undue concentration of economic power—
 - (i) require the firms or companies concerned, not being public limited companies, to be converted, within such time and in such manner as may be specified in the order, into public limited companies;
 - (ii) require the controlling share-holders of the public limited companies concerned to offer such part of the stocks and shares held by them within such time and in such manner as may be specified in the order to the general public, including the National Investment Trust and an investment institution established or controlled by Government;

17. 1986 CLC 2712.

18. PLD 1986 Lah. 346 = PLJ 1986 Lah. 408 = NLR 1987 AC 227.

19. PLD 1986 Lah. 346 = PLJ 1986 Lah. 408 = NLR 1987 AC 227.

- (iii) prescribe the circumstances in which and the conditions on which the associated undertakings concerned may deal with each other;
- (b) in the case of unreasonable monopoly power,--
- (i) require the person or undertaking concerned to divest himself or itself of the ownership of any stock or shares or other beneficial interest in any undertaking or of any assets within such time and under such conditions as may be specified in the order;
 - (ii) require the person concerned to divest himself of any position held by him as an officer, director or partner in any undertaking with such time and under such conditions as may be specified in the order;
 - (iii) require the person or undertaking concerned to divest himself or itself of the management or control of any undertaking within such time and under such conditions as may be specified in the order;
 - (iv) prohibit the person or undertaking concerned from acquiring the stock or assets of, or the undertaking from merging with, any other undertaking;
 - (v) limit the total loans which may be made by any bank or insurance company to any single individual or undertaking, or to any undertaking associated with such bank or insurance company;
 - (vi) limit the investments of any undertaking engaged in the banking, investment or insurance business;
 - (vii) require the person or undertaking concerned to take such actions specified in the order as may be necessary to restore competitive prices and eliminate restrictions on output or entry of competitors in the market;
- (c) in the case of unreasonably restrictive trade practices,--
- (i) require the person or undertaking concerned to discontinue or not to repeat any restrictive trade practice and to terminate or modify any agreement relating thereto in such manner as may be specified in the order;

- (ii) require the person or undertaking concerned to take such action specified in the order as may be necessary to restore competition in the production, ~~distribution~~ or sale of any goods or provision of any services.

²⁰[*Explanation.* In the case of unreasonably restrictive trade practices, where any party to any such practice does not carry on business in Pakistan, the order of the Authority shall be with respect to that part of such practice as it carried on in Pakistan.]

(2) An order referred to in sub-clause (ii) of clause (a) of sub-section (1) or sub-clause (i) of clause (b) of that sub-section shall not be so made as to require the offer of the stocks or shares at a price below their face value or at a price below the aggregate of such value and fifty per cent, of the difference between such value and the net worth of the stocks or shares as may be determined in accordance with the rules made in this behalf, whichever is greater.

[(3) Where any stocks or shares have been offered in pursuance of an order referred to in sub-section (2) and have not been actually subscribed, no fresh order of such nature shall be made in respect of the same person or undertaking within a period of three years from the date of such order.]

Synopsis

- | | |
|---|---|
| 1. Scope. | 3. Disinvestment after show-
cause notice. |
| 2. Public interest to be
considered. | 4. Disinvestment order. |
| 5. Contents of order. | |

1. **Scope.** Under section 12, in the case of undue concentration of economic power, the authority may either require the firm or company concerned, which is not a public limited company, to convert itself, within such time and in such manner as may be specified in the order, into a public limited company, or it may require the controlling shareholders of the public limited company concerned to offer such part of the stocks and shares held by them within such time and in such manner as may be specified in the order to the general public, including the NIT and any investment institution established or controlled by the Government. It is obvious that section 4(a)(i) connects with the action proposed under section 12(1)(a)(i) and that section 4(a)(ii) connects with the action proposed under section 12(1)(a)(ii) of the Ordinance. The words "within such time and in such manner as may be specified in the order" appearing in S. 12 (1)(a)(i) relate to the procedural requirements which a firm or a private limited company would have to meet to convert itself into a public limited company. Any direction by Authority

20. Added by Ord., 26 of 1980. S. 6.

1. Subs. by Ord., 26 of 1980. S. 6.

covering disinvestment of shares in an order passed under S. 12(1)(a)(i) would be without jurisdiction and null and void.²

2. Public interest to be considered. Public interest with respect to an order proposed to be passed under section 12(1)(a)(i) may perhaps only be limited to the consideration of compelling the private company to convert itself into a public company to make itself more broadbased and vulnerable to public scrutiny by the Corporate Law Authority and the Monopoly Control Authority, or perhaps with the future consideration of determining and taking action against persons who may hold or control 50% or more of the voting power in the public company to be formed but public interest with regard to an order proposed to be passed under section 12(1)(a)(ii) would have to take into consideration more important questions, such as whether any of the controlling shareholders, whose shares are proposed to be offered to the general public, is not a foreign individual or company who has been allowed to invest his or its capital on special terms under the Foreign Investment (Promotion and Protection) Act, 1976, and whether any investment by the said individual or company would not violate any solemn commitment made to him or them by the Pakistan Government and whether such an order proposed to be passed would not violate generally any public assurance given by the Pakistan Government to foreign entrepreneurs to invest their capital in this country, under special favoured terms.³

3. Disinvestment after show-cause notice. Normally any action of disinvestment taken by a person to whom show-cause notice for initiation of proceedings has been issued, would not be a valid transaction, but where no restraining order had been issued by Authority, disinvestment done during pendency of case could not legally be held to be invalid.⁴

4. Disinvestment order. There is no power to order disinvestment under section 12(1) (a)(i) of Ordinance (V of 1970) when calling upon any firm or private company to convert itself into a public limited company. No such power can be derived from section 11(3). There is power to order disinvestment under section 12(1) (a)(ii), if the Authority finds that any individual shareholder of a public company holds or controls shares carrying 50 per cent or more of its voting power, but the Authority's power is only limited to the said controlling shareholder, who has to be an individual. There is no power with the Authority to order disinvestment by share-holders who own or control less than 50% of the voting power. When determining who is the "individual" holding the controlling power for the purpose of section 4(a)(ii), the Authority can go behind the veil by not only determining the voting power held by such individual in the public company concerned, which is the subject of the inquiry, but by the voting power held by him in any firm or company, which is also a share-holder in the company, which is the subject of inquiry, it being understood, under section 2(2), that the individual would include his spouse brother or sister or lineal ascendants or descendants. Thus, an order of the Authority under section 12(1)(a)(ii) can require the controlling shareholder of the public limited company concerned, to disinvest such part of the stocks and shares held by him, as may be specified in the order, to the

2. PLD 1986 Lah. 346 = PLJ 1986 Lah. 408 = NLR 1987 AC 227.

3. PLD 1986 Lah. 346 = PLJ 1986 Lah. 408 = NLR 1987 AC 227.

4. 1986 CLC 2764.

general public, including NIT or any other investment institution established or controlled by the Government. Excepting this limited power of disinvestment, which the Authority has under section 12(1) (a)(ii), it has no other power. The Authority cannot arrogate to itself powers of ordering disinvestment, otherwise available to other Authorities or Department of Government on any basis whatsoever, either by pretending it has powers under S. 11(3) of the Ordinance which it does not have, or on any equitable basis.⁵

5. Contents of order. Authority which is empowered to pass an order, if certain circumstances exist, must in its order show the existence of these circumstances. Where such circumstances are not stated in order of Tribunal, order can be declared void.⁶

13. Power to issue interim order. (1) Where, during the course of any proceeding under section 11, the Authority is of opinion that issue of a final order in the proceeding is likely to take time and that, in the situation that exists or is likely to emerge, an interim order is necessary in the public interest, it may, after giving the persons or undertakings concerned an opportunity of being heard, by order, direct such persons or undertakings to do or refrain from doing or continuing to do any act or thing specified in the order.

(2) An order under sub-section (1) may, at any time, be modified or cancelled by the Authority and, unless so cancelled, shall remain in force for such period as may be specified therein but not beyond the date of the final order made under section 11.

14. Special enquiry. (1) The Authority may, on its own, and shall upon a reference made to it by the [Federal Government], conduct special enquiries into any matter relevant to the purposes of this Ordinance.

(2) Where the Authority receives from not less than twenty-five persons a complaint in writing of such facts as constitute a contravention of the provisions of section 3, it shall, unless it is of opinion that the application is frivolous or vexatious or based on insufficient facts, conduct a special enquiry into the matter to which the complaint relates.

(3) If upon the conclusion of a special inquiry under sub-section (1) or sub-section (2), the Authority is of opinion that the findings are such that it is necessary in the public interest so to do, it shall initiate proceedings under section 11.

5. PLD-1986 Lah. 346 = PIJ 1986 Lah. 408 = NLR 1987 AC 227.

6. PLD 1986 Lah. 346 = PIJ 1986 Lah. 408 = NLR 1987 AC 227.

7. Subs. by P.O. 4 of 1975.

15. *Powers of the Authority in relation to a proceeding or enquiry.*

(1) The Authority shall, for the purposes of a proceeding or enquiry under this Ordinance, have the same powers as are vested in the Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908), while trying a suit, in respect of the following matters, namely:--

- (a) the summoning and enforcing the attendance of any witness and examining him on oath;
- (b) the discovery and production of any document or other material object producible as evidence;
- (c) the reception of evidence on affidavits;
- (d) the requisitioning of any public record from any Court or office;
- (e) the issuing of commissions for the examination of witnesses and documents.

(2) Any proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Pakistan Penal Code (Act XLV of 1860), and the Authority shall be deemed to be a Civil Court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (Act V of 1898).

(3) The Authority may, for the purposes of a proceeding or enquiry under this Ordinance, require any person--

- (a) to produce before, and to allow to be examined and kept by, as officer of the Authority specified in this behalf, any books, accounts, or other documents in the custody or under the control of the person so required, being documents relating to any matter the examination of which may be necessary for the purposes of this Ordinance; and
- (b) to furnish to an officer so specified such information in his possession relating to any matter as may be necessary for the purposes of this Ordinance.

CHAPTER V REGISTRATION

16. *Registration.* (1) In order that information relevant to the performance of its functions under this Ordinance is available to

the Authority the following undertakings, individuals and agreements shall be registered with the Authority in such manner as may be prescribed by rules, namely:--

- (a) An undertaking which, during the next preceding calendar year produced, distributed, sold or provided not less than one-third of the total production or supply of any goods or services.⁸[* * * *].
- (b) Associated undertakings engaged in the same line of business, which during the next preceding calendar year produced, distributed, sold or provided not less than ⁹[one-third] of the total production or supply of any goods or services ⁹[* * * *].
- (c) An undertaking which during the next preceding calendar year, by itself or together with its associated undertaking, both produced and distributed by wholesale or by retail or by both not less than twenty per cent. of the total production and supply of any goods in any Province.
- (d) An undertaking which is not owned by a public company and the total value of the assets of which is not less than ¹⁰[fifty million] rupees.
- (e) An undertaking which, by agreement otherwise, establishes minimum resale prices for retailers or wholesalers with regard to goods which it produces or distributes.
- (f) An undertaking which, by itself or together with its associated undertaking, is the sole distributor or supplier ⁸[* * * *] for more than one undertakings of any goods or services.
- (g) A bank, investment company or insurance company which, in relation to any other undertaking, is an associated undertaking.
- (h) An individual who holds or controls, whether directly or indirectly, shares carrying not less than fifty per cent. of the voting power in ⁹[undertakings] owned by a public company the total value of the assets of which is not less than ¹⁰[fifty million] rupees.

8. Omitted by Ord., 26 of 1980, S. 7.

9. Subs. by Ord., 26 of 1980, S. 7.

10. Subs. by Ord., 14 of 1982, S. 3.

- (i) An agreement for any such acquisition or merger as is referred to in clause (b) of sub-section (1) of section 5.
- (j) An agreement of the nature referred to in sub-section (1) of section 6.
- (k) An agreement for the distribution or sale of any goods which, directly or indirectly,—
 - (i) limits the areas in which, or the persons to whom, the product may be re-sold;
 - (ii) prohibits or restricts the distribution or sale of other goods by the distributor;
 - (iii) limits the persons through whom the distributor may distribute or sell such goods.
- (l) Any licence of patents of technology which limits the freedom of the licensee to use such patents or technology in the manufacture of any goods or to sell the goods produced under such licence at such prices, in such areas, to such persons and for such uses as the licensee may choose, or which limits the freedom of the licensor to grant additional licenses to such persons and on such terms as he may choose.
- (m) Such other persons, undertakings, agreements or franchise as the Authority may by rule prescribe.

Explanation.--For the purposes of clauses (a), (b) and (c), the percentage of any goods produced, distributed or sold or of any services provided shall be computed on the basis of the monthly statistical bulletin of the "[Federal] Statistical Office of the "[Federal Government] or on such other basis as the Authority may by rule prescribe.

(2) An application for registration under sub-section (1) shall be made in the form of a memorandum which shall--

- (a) in the case of an undertaking, set out the value of its assets, the volume of each of the goods or services sold or provided by it, and the full particulars of the facts by reason of which it is subject to registration;

- (b) in the case of an individual, set out a statement of the extent and nature of his control over an undertaking or its shares, by reason of which he is subject to registration;
- (c) in the case of an agreement, set out the names and addresses of the persons who are parties to the agreement and be accompanied by a true copy of the agreement or, if the agreement is not in writing, by the full particulars of the agreement.

(3) An application for registration shall be made:--

- (a) in the case of an undertaking, by the person who is for the time being responsible for the conduct of the office of the undertaking;
- (b) in the case of an individual, by such individual; and
- (c) in the case of an agreement, by all the parties thereto.

Explanation.--The provisions of this sub-section shall be deemed to have been complied with if the application is made--

- (a) in the case of an undertaking, by the person for the time being responsible for the conduct of the affairs of any one of its associated undertakings;
- (b) in the case of an individual other than a Hindu undivided family, by any one of his relations referred to in sub-section (2) of section 2;
- (c) in the case of a Hindu undivided family, by any member of the family; and
- (d) in the case of an agreement, by any one of the parties thereto.

(4) If at any time there is any variation in the relevant facts relating to an undertaking, individual or agreement with reference to which an application for registration was made or registration was effected, particulars of such variation shall, within thirty days of the variation, be reported to the Authority by the person referred to in sub-section (3).

Synopsis

- | | |
|---|---------------------------------|
| 1. Scope. | 4. Limitation for registration. |
| 2. Associated undertakings. | 5. Non-registration, effect of. |
| 3. Person holding more than fifty per cent shares--liability to register. | |

1. **Scope.** An undertaking being a sole agent or distributor of more than one undertaking, would be registrable under S. 16(1)(f) of the Ordinance.¹²

Value of undertaking. Investment is considered as gainful assets, and in balance-sheet of every undertaking investment is shown on assets side. Income both profit and loss from investment also goes to balance-sheet of investing company. Investment, therefore, could not be excluded from assets. Liability against investment is taken into account for calculation of net worth of company and not for total assets of company. Undertaking, a private limited company with capital of exceeding one crore is, therefore, liable for registration.¹³ But as only an undertaking having a value of Rs. one crore or more is liable to be registered, the plea of undertaking that its assets on specified date were less than one crore, it had not committed any default by not submitting application for registration, was upheld by the Authority.¹⁴

Distribution. Word, "distribution", covers all persons and companies in the channel of "distribution". Undertaking having a vital link in such channel would be a distributor and its business, "distribution".¹⁵

Distribution is a business which comes under the definition of 'trade' and any practice relating thereto comes under the definition of 'trade practice' and can thus become a legitimate subject of study and control by the Monopoly Control Authority. Similarly a reference is not precluded from interfering with a vertical relationship like the one between a supplier and a dealer of goods.¹⁶

2. **Associated undertakings.** Definition of term 'associated undertaking' is wide and would cover cases of undertaking being under common management or common control or one being subsidiary of the other.¹⁷ Where two undertakings are under common management with common directors both undertakings, are "associated undertakings" registrable with the Authority under the Ordinance.¹⁸ Even where under changed circumstances Establishment was not required to continue to be registered under S. 16(1)(a) but being associated undertaking with other undertakings because of common directorship and as subsidiary to other, registration thereof under S. 16(1)(g), would subsist.¹⁹

Overseas Bank, by accepting money from persons abroad and remitting the same to Pakistan, would be carrying out process of banking within Pakistan also. Overseas Bank carrying out functions of disbursal and registered in Pakistan would be a Bank within the meaning of S. 16(1)(g) of the Ordinance.²⁰

3. **Person holding more than fifty per cent shares—liability to register.** Where an individual possessed and controlled more than fifty per cent of voting power, value of assets of such company being more than one crore rupees, such

12. 1987 CLC 1949.

13. 1986 CLC 2692.

14. 1986 CLC 2705.

15. 1987 CLC 1949.

16. P.L.D 1976 Lah. 833 = PLJ 1977 Lah 732.

17. 1986 CLC 2764.

18. 1986 CLC 2867.

19. 1986 CLC 2876.

20. 1986 C.I.C 2489 (DB).

person as an individual, was required to get himself registered under S. 16(1)(h).¹ Where in reply to a show-cause notice served on an individual alleged to be controlling more than 50% shares of a company which included shares owned by individual's brother's wife and two minor children. The defence plea that the latter shares were not covered by the section was not accepted and it was held that it was incumbent on the individual to produce evidence that his brother was not controlling shares, held, by his wife and minor children. In absence of such evidence, he would be deemed to control shares held by his brother's wife and minor children.²

4. Limitation for registration. Phrase "the application shall be filed within fifteen days of the date when agreement became registrable under the Ordinance" in R. 10 is vague and needs further clarification as neither S. 16 of the Ordinance nor proviso to R. 10 of the Rules specifies any definite point of time for reckoning the duration of 15 days provided in the latter.³

5. Non-registration, effect of. Individuals who hold or control, whether directly or indirectly, shares carrying 50% or more of the voting power in public companies, the total value of whose assets exceeds five crore of rupees, also have to get themselves registered under section 16(1)(h) with the Monopoly Control Authority. In determining whether such individuals hold 50% or more voting power the fact that they do so through other intermediary companies or firms is generally examined. The "individual" in section 4(a)(ii) also does not include a company. Thus, an order of the Authority under section 12(1) (a)(ii) can require the controlling shareholder of the public limited company concerned, to disinvest such part of the stocks and shares held by him, as may be specified in the order, to the general public, including NIT or any other investment institution established or controlled by Government, and he would be liable for the lapse.⁴ An undertaking not registering itself would be committing default rendering itself liable to imposition of penalty for such default.⁵

17. Registers to be kept. (1) The Authority shall keep and maintain in such form as may be prescribed by rules separate registers for the registration of undertakings, individuals and agreements subject to registration under this Ordinance.

(2) The Authority shall register an undertaking, individual or agreement by entering in the register such particulars relating thereto as may be prescribed by rules.

(3) The Authority shall enter in the register any variation in the facts relating to an undertaking, individual or agreement reported to it.

1. 1986 CLC 2254+1986 CLC 2752+1986 CLC 2256+PLD 1986 Lah. 346=PLJ 1986 Lah. 408.

2. 1986 CLC 2752.

3. 1990 CLC 1008.

4. PLD 1986 Lah. 346=PLJ 1986 Lah. 408.

5. 1987 CLC 1949.

(4) A register shall be open to public inspection at such time and on payment of such fees as may be prescribed by rules, except that the Authority may, upon application by the person or undertaking concerned, provide for the confidential treatment of trade secrets.

18. *Cancellation of registration.* Where an undertaking, individual or agreement registered under section 16 has, by reason of a change in the facts, with reference to which the registration was effected, ceased to be subject to registration under this Ordinance and the fact is reported to the Authority by the person referred to in sub-section (3) of section 16, the Authority shall, if it is satisfied upon such inquiry as it may think fit that the undertaking, individual or agreement has so ceased, cancel the registration.

1. Scope. An application for de-registration under section 18 would apply only to registration under section 16(1)(a) where the requirement is quantum of service rendered. Registration under section 16(1)(g) will have to subsist because there is no change of any facts.⁶

CHAPTER VI

PENALTIES AND APPEALS

19. *Penalty.* (1) The Authority may, by order, direct any person or undertaking to pay to the ⁷[Federal Government] by way of penalty such sum not exceeding one lakh of rupees as may be specified in the order if, after giving the person or undertaking concerned an opportunity of being heard, it determines that such person or undertaking--

- (a) has failed to comply with any order of the Authority made under this Ordinance, or has willfully failed to register as required by the provisions of this Ordinance, or
- (b) has furnished any information or made any statement to the Authority which he knows or has reason to believe to be false in material particular.

(2) If any such failure as is referred to in clause (a) of that sub-section is a continuing one, the Authority may in the manner provided for in sub-section (1) also direct that the person or undertaking guilty of such failure shall pay by way of penalty to the

6. 1986 C.I.C 2876.

7. Subs. by P.O. 4 of 1975.

[Federal Government] a further sum which may extend to ten thousand rupees for every day after the first.

(3) A penalty imposed under sub-section (1) or sub-section (2) shall be recoverable as an arrear of land revenue.

Synopsis

1. Wilful default to register.

2. Parties must be heard.

1. **Wilful default to register.** The word "wilful" or "wilfully" has been used in many enactments, particularly in the provisions of penal nature, and it has many a time been judicially interpreted. In the ordinary dictionary sense it means intentional or deliberate. The term, as used in different statutes and judicial precedents, means deliberate or intentional and not accidental or by inadvertence. It connotes a conscious act signifying something more than a mere omission, default or inaction on the part of a person who is under a legal obligation to do or not to do a particular thing. In other words, an act done intentionally, knowingly or purposely as distinct from the one done carelessly, thoughtlessly, heedlessly or inadvertently.⁸ Where undertaking has no valid explanation to explain default such undertaking, would be deemed to have wilfully failed to comply with orders of Authority and as such would be liable to penal action.⁹

An undertaking wilfully failing to register would be liable to penalty for such default.¹⁰ Where undertaking committed default in complying with order of Authority regarding supply of information within prescribed time and also wilfully failed to register within specified time, such undertaking, was held liable to penalty for failure to register and was directed to get registration within prescribed period.¹¹ Plea of default being not wilful would be of no effect because every citizen is presumed to know statute law of realm and to construe it aright. Ignorance of law would never be recognized as valid excuse. No such plea is open to a person before Court, Tribunal or Authority seized of a case of infringement of statutory obligation. A person who wilfully failed to get himself registered was required to pay to Government by way of penalty a specified amount.¹² Where non-registration of undertaking proved to be wilful, its assets being not less than Rs. one crore, it would be liable to penalty. Promptitude in giving necessary information required by Authority and submission of application for registration during course of hearing would be considered mitigating circumstances while imposing penalty.¹³ Where undertaking was not registrable under S. 16(1)(d), its total value of assets on specified date being less than Rs. one crore, but its registration under S. 16(1)(g) was essential on account of association by virtue of common directorship with another undertaking which had been duly registered. Non-registration of such undertaking, would be deemed to be wilful default. Authority, however, taking notice of fact that undertaking promptly applied for registration as soon as value of its assets exceeded Rs. one crore and there being

8. 1990 CLC 1008.

9. 1986 CLC 2878.

10. 1986 CLC 2867 + 1986 CLC 2757 + 1980 CLC 2728 + 1986 CLC 2252.

11. 1986 CLC 2715.

12. 1986 CLC 2253.

13. 1986 CLC 2692.

genuine mistake with regard to application of relevant provision of law, took lenient view while imposing penalty.¹⁴ Similarly extenuating circumstances like undertaking applying for registration on knowledge of correct legal position and weak financial position would call for taking lenient view by Authority. Undertaking was directed to be duly registered.¹⁵ If an undertaking in reply to a show-cause notice applies for registration, it would call for lenient view to be taken against such undertaking.¹⁶ But failure to have an undertaking registered within prescribed time, would not be excusable where the undertaking tried to mislead Authority by fabricating false evidence.¹⁷

Individual, default by. Where an individual registrable under S. 16(1)(h) of Ordinance, V of 1970 applies for registration, after receipt of show-cause notice lenient view would be taken while imposing penalty under S. 19.¹⁸

Failure to comply with show-cause notice. After show-cause notice is given by Authority, non-submission of requisite information by specified date, would amount to wilful default on part of undertaking. Such undertaking would be liable to penalty under S. 19.¹⁹ But where default to furnish information to Authority is explained on genuine grounds, Authority, will take a lenient view of the case and impose nominal penalty.²⁰

2. Parties must be heard. Before penalty is imposed under this section, parties to be affected must be heard. Therefore necessary parties to the proceedings must be impleaded so as to afford them the opportunity of being heard alongwith the company during further proceedings.²¹

20. Appeal to the High Court. Any person aggrieved by an order of the Authority under section 11 or section 19 may, within sixty days of the receipt of such order, appeal against it to the High Court on any of the following grounds, namely:--

- (a) that the order is contrary to law or to some usage having the force of law;
- (b) that the order has failed to determine some material issue of law or usage having the force of law;
- (c) that there has been a substantial error or defect in following the procedure provided in that Ordinance which may possibly have produced error or defect in the order upon the merits.

14. 1986 CLC 2708.

15. 1986 CLC 2706 + 1986 CLC 2726.

16. 1986 CLC 2757 + 1986 CLC 2752 + 1986 CLC 2738.

17. 1986 CLC 2716.

18. 1986 CLC 2253.

19. 1986 CLC 2684.

20. 1986 CLC 2724.

21. 1990 CLC 1008.

21. *Power to call for information relating to undertakings.* Notwithstanding anything contained in any other law for the time being in force, the Authority may, by general or special order, call upon any person for the time being responsible for the conduct of the affairs of an undertaking to furnish periodically or as and when required any information concerning the activities of the undertaking, including information relating to its organization, business, trade practices, management and connection with any other undertaking which the Authority may consider necessary or useful for the purposes of this Ordinance.

1. *Scope.* Failure to put forth any cogent reasons for non-compliance with order of Authority regarding furnishing of information, would render undertaking liable to penalty.¹

Delay in supply of information. Where the undertaking being branch of a foreign company none of whose Directors were Pakistan National or resident in Pakistan and required information had to be called from abroad from where it was despatched before issue of show-cause notice, it was held that the delay was unavoidable and was to be condoned.² Therefore, in view of undertaking supplying requisite information before date of hearing, Authority took a lenient view in imposition of penalty.³

Where notice, requiring appellant to submit required information to Authority was received by appellant on the very date on which appellant was asked to submit such information. Appellant, however, without asking for fresh notice, supplied information to Authority few days after appointed date. Default on behalf of appellant in supplying information on due date was not wilful, but purely technical. Authority should have taken a lenient view of such non-compliance of notice on behalf of appellant. Appellate Court modified order of Authority and reduced fine imposed on appellant.⁴

Reasons for notice. Where notice for supply of information does not disclose reason for it, rights of petitioner are not violated. Notice must be complied with.⁵

22. *Compensation not payable.* No person shall be entitled to or be paid any compensation or damages for any loss or injury suffered by him on account of the termination of any agreement or employment or the divestment of any share or property in pursuance of any order made under this Ordinance.

23. *Indemnity.* No suit, prosecution or other legal proceeding shall lie against the Authority or any officer or servant of the

1. 1986 CLC 2721 + 1986 CLC 2719.

2. 1986 CLC 2723.

3. 1986 CLC 2709.

4. 1987 CLC 1108 = NLR 1987 AC 98.

5. 1976 SCMR 99.

Authority for anything in good faith done or intended to be done under this Ordinance or any rule or order made thereunder.

24. *Power to make rules.* The Authority may make and publish rules regarding procedures, fees and all other matters for carrying out the purposes of this Ordinance.

25. *Ordinance not to apply to certain undertakings.* This Ordinance shall not, unless the "[Federal Government] by notification in official Gazette otherwise directs, apply--

- (a) to an undertaking which is owned by the "[Federal Government] or a Provincial Government, or
- (b) to an undertaking which is owned by a body corporate established by the Government by law or whose Chief Executive is appointed by or with the approval of the "[Federal Government] or by a Provincial Government, or
- (c) to anything done by any person or undertaking in pursuance of any order of the "[Federal Government] or a Provincial Government, or
- (d) to anything done by a Trade Union or its members for carrying out its purposes.

6. Subs. by P.O. 4 of 1975.

7. Subs. by P.O. 4 of 1975.

MONOPOLY CONTROL AUTHORITY RULES, 1971

[*Gazette of Pakistan, Extraordinary, 31st December, 1971*]

S.R.O. 641(I)/71.—The Monopoly Control Authority, in exercise of powers conferred by section 24 of the Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970 (V of 1970), hereby makes the following Rules:--

PRELIMINARY

1. **Short title and commencement.** (1) These Rules may be called the Monopoly Control Authority Rules, 1971.

(2) They shall come into force at once.

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

(a) "Accountant" means a chartered accountant within the meaning of the Chartered Accountants Ordinance, 1961 (X of 1961) or an industrial accountant within the meaning of the Industrial Accountants Act, 1966 (XIV of 1966);

(b) "Advocate" means a person entitled under the Legal Practitioners and Bar Councils Act, 1965 (III of 1965), to practise the profession of law;

(c) "Chairman" means the Chairman of the Monopoly Control Authority;

(d) "Form" means a Form set out in the Schedule to these Rules;

(e) "Member" means a Member of the Monopoly Control Authority, and includes the Chairman;

(f) "Ordinance" means the Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970 (V of 1970);

(g) "Register" shall not include a Special Part thereof;

(h) "Registrar" means the Registrar of Monopoly Control Authority;

(i) "Section" means a section of the Ordinance.

(2) All other terms and expressions shall have the same meanings as are assigned to them in the Ordinance.

(3) Where any particular number of days is prescribed in these Rules or in an order of the Authority, the same shall be reckoned exclusively of the first day and inclusively of the last day, unless the last day shall happen to fall on a day which is a public holiday, in which case the time shall be reckoned exclusively of that day also and of any succeeding such public holiday.

3. **Headquarters of the Authority.** The Headquarters of the Authority shall be at Islamabad. The Authority may however establish its Branch Registry/Offices at such place or places in Pakistan as it may deem fit.

4. Sittings of the Authority. The sittings of the Authority shall normally be held at Islamabad, but the Authority may sit in such other place or places in Pakistan as the Authority may from time to time notify.

5. Hearing to be in public. (1) Subject to the provisions of sub-rule (2), the hearing of the proceedings before the Authority shall be in public.

(2) Where the Authority is satisfied that it is desirable to do so, by reason of the confidential nature of any evidence or matter; or for any other reason, the Authority may--

- (a) hear the proceeding or any part thereof in private;
- (b) give directions as to the persons who may be present thereat;
- (c) prohibit or restrict the publication of any part of evidence given before the Authority, or of matters contained in documents filed before the Authority.

6. Procedure of the Authority. (1) Subject to the provisions of the Ordinance and these Rules, the Chairman shall have power to regulate--

- (a) the conduct of the business of the Authority;
- (b) the performance by one or more Members of any function or the exercise of any power relating to a proceeding or inquiry.

(2) In particular, and without prejudice to the generality of the foregoing provisions, the powers of the Authority shall include the power to determine the extent to which persons interested or claiming to be interested in the subject-matter of any proceedings before it are allowed to be present or to be heard either by themselves, or through Advocate or Accountant or authorised agent, to cross-examine witnesses, or otherwise to take part in the proceedings.

7. Decisions of the Authority. (1) All sittings, of the Authority shall be presided over by the Chairman, and in the absence of the Chairman, by a Member authorised in that behalf by the Chairman.

(2) The decisions of the Authority shall be expressed in terms of the opinion of the majority of the Members.

(3) Where a case is heard by two Members by reason of a vacancy and there is difference of opinion amongst the Members, the case shall be re-heard by the full Authority, after the vacancy has been filled.

8. Appearance by authorised representative. Any individual, who is entitled or required to attend before the Authority in connection with any proceeding under the Ordinance, otherwise than when required to attend personally for examination on oath or affirmation, may be represented at such attendance by a person authorised by him in writing in this behalf, or an Advocate or an Accountant.

REGISTRATION OF UNDERTAKINGS, ETC.

9. Registrar of Monopoly Control Authority. (1) For maintaining registers for registration of undertakings, individuals and agreements subject to registration

under the Ordinance and for performing such other duties as the Authority may assign, there shall be appointed by the Authority an officer to be known as the Registrar.

(2) The Authority may appoint as many persons as it thinks fit to be Deputy or Assistant Registrars for the purpose of assisting the Registrar in the performance of his functions.

10. Registration. (1) Every undertaking, individual and agreement of the nature referred to in section 16 shall be registered with the Authority within fifteen days of the publication of these Rules in the official Gazette. The Authority may extend the date on representation from persons or undertakings concerned if it is satisfied that extension is justified:

Provided that in the case of an undertaking, individual or agreement becoming liable to registration after the aforesaid date, the application shall be filed within fifteen days of the date when such undertaking, individual or agreement becomes registrable under the Ordinance.

(2) (a) With every application for the registration of an undertaking, there shall be furnished such particulars as are specified in Form I.

(b) With every application for the registration of individual there shall be furnished such particulars as are specified in Form II.

¹[Explanation. An individual who is registrable in relation to more than one undertaking shall apply separately in respect of each undertaking.]

(c) With every application for the registration of an agreement, there shall be furnished such particulars as are specified in Form III.

²[Explanation. If more than one agreement are required to be registered and such agreements are identical in nature, the requirement of this rule shall be satisfied if only one consolidated application is made and a list of parties to the agreement together with such other particulars as may vary in each agreement is furnished].

³[* * * * *]

(3) Every application under this rule shall be accompanied by a fee of one hundred rupees.

(4) Upon registration, the Registrar shall issue a certificate in Form IV.

COMMENTS

1. **Scope.** Phrase "the application shall be filed within fifteen days of the date when agreement became registerable under the Ordinance" in R. 10 is vague and needs further clarification as neither S. 16 of the Ordinance nor proviso to R. 10

1. Subs. by S.R.O. 753(1)/78, dated 12.6.1978.

2. Subs. by Notification S.R.O. 753(1)/78, dated 12.6.1978.

3. Words deleted by Notification S.R.O. 1141(1)/80, dated 15.11.1980.

of the Rules specifies any definite point of time for reckoning the duration of 15 days provided in the latter.⁴

11. Registers and Special Parts of Registers. (1) The Registrar shall maintain separate registers for the registration of undertakings, individuals and agreements subject to registration under this Ordinance, containing particulars as set out in Forms V, VI and VII.

(2) The Registrar shall provide for the maintenance confidentially of a Special Part of each register for the entry or filling in that Part of such particulars as the Authority may on the application of the person or undertaking concerned direct under sub-section (4) of section 17, to be treated as trade secrets.

12. Inspection of Registers. (1) Any person who wishes to inspect a register other than the Special Part thereof, shall apply to the Registrar specifying the register he wishes to inspect on payment of a fee of Rs.10.

(2) The Registrar may allow the applicant to inspect the register, other than the Special Part thereof, during working hours either in his presence or in the presence of any other person authorised by him in that behalf.

(3) The applicant shall not be permitted to take out copies or extract of any particulars entered in the register, but may be allowed to take notes of any points from such particular.

MISCELLANEOUS

13. Advice to undertakings, etc. (1) A person or an undertaking asking for advice under clause (d), section 10 shall submit to the Authority a 'Statement of the Case' bringing out clearly the action or actions proposed to be taken.

(2) A fee of ⁵[one thousand] rupees shall be paid with every such Statement.

14. Orders of the Authority to be noted in Register. The Authority shall cause every order passed by it under sections 11, 13, 18 or 19 to be noted in the relevant register maintained by the Registrar.

15. Seal of the Authority. (1) The official Seal to be used in the Authority shall be such as the Authority may from time to time direct and shall be kept in the custody of the Registrar.

(2) Subject to any general or special directions given by the Chairman, the Seal of the Authority shall not be affixed to any order, summons, requisition, commission or other process, save under the authority in writing of the Registrar.

⁹(3) The Seal of the Authority shall not be affixed to any certified copy save under the authority of the Registrar or of an officer authorised in writing in that behalf by the Registrar.]

4. 1990 CLC 1008.

5. Subs. by Notification No. S.R.O. 573(1)/82, dated 16.6.1982.

6. Subs. by Notification No. S.R.O. 753(1)/78, dated 12.6.1978.

⁷[16. Copying fees and certified copies: (1) The copying fee for certified copies of the order of the Authority and other documents shall be ten rupees for every one thousand words or a part thereof:

Provided that the Chairman may direct that certified copy of an order of the Authority be sent or furnished, without charging any fee, to a person affected by such order.

(2) The copies shall be certified by the officer having the custody of the order or the document as the case may be and sealed with the official seal of the Authority by the Registrar or an officer authorised in writing in that behalf by the Registrar.]

⁸[17. Payment of penalties and fees. (1) All penalties imposed under the Ordinance shall be paid into the State Bank of Pakistan, or any Bank acting as an agent of the State Bank of Pakistan or any Scheduled Bank declared as Bankers to the authority under the Major Head "[1300-Miscellaneous Receipts" and minor Head "1390-Other Realizations under Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970].

(2) Fees payable under this Ordinance or these Rules, or Orders thereunder shall be paid by bank draft in favour of Monopoly Control Authority Fees Account National Bank of Pakistan, Main Branch, Islamabad.

18. Payment of Fees. Fees payable under the Ordinance, or these Rules or orders thereunder, shall be paid into the State Bank of Pakistan, or any Bank acting as the agent of the State Bank of Pakistan or any scheduled Bank declared as Bankers to the Authority.

SCHEDULE

FORM I

[Vide rule 10(2)(a)]

MEMORANDUM

*The Monopolies and Restrictive Trade Practices (Control and Prevention)
Ordinance, 1970 (V of 1970)*

PARTICULARS TO BE FURNISHED WITH APPLICATIONS FOR
REGISTRATION OF UNDERTAKINGS

1. Name of Undertaking:
2. Registered Office/Head Office:
3. Registration Number under the Factories Act, 1934 (XXV of 1934), if any, or under any other law:

7. Subs. by Notification No. S.R.O. 753(1)/78, dated 12.6.1978.

8. Rule 17 subs. by Notification S.R.O. No. 230(1)/77, dated 16.3.1977.

9. Subs. by Notification S.R.O. No. 1236(1)/80, dated 19.12.1980.

4. Ownership—whether proprietary, partnership, private limited company, or public limited company:

5. Name of the applicant and position held in the undertaking:

6. If the undertaking is proprietary concern/partnership firm:—

- (a) The name(s) of the proprietor(s)/partners and their address(es);
- (b) Full details of the proprietorships, partnerships or directorship together with percentage of voting power held by persons shown against (a) above, in any associated undertaking, or in any other undertaking;
- (c) Particulars of inter-connection between the undertakings, if any:

7. If the undertaking is a private/public company:—

- (a) Names and addresses of Directors, including Managing/whole-time Directors and manager, if any;
- (b) Full details of the proprietorships, partnerships held by the Director and Manager as well as the percentage of voting power of each Director and Manager in the undertaking, in the associated undertaking, or in other undertakings;
- (c) Particulars of connections between the undertakings, if any:

8. Value of assets of undertaking and of each associated undertaking separately [*vide* S. 2(1)(o)]:

9. Volume of goods, services, produced, distributed or sold or supplied during the next preceding calendar year (19.....) in a province [*vide* S. 16(1)(a)]:

10. Percentage of total production and supply of goods, both produced and distributed (by itself or together with its associated undertaking) during the next preceding calendar year (19.....) [*vide* S. 16(1)(c)]:

11. Whether by agreement or otherwise, the undertaking has established minimum resale prices of goods produced or distributed for retailers or wholesalers [*vide* S. 16(1)(e)]:

12. Whether itself or with associated undertaking sole distributor or supplier in any Province for more than one undertaking of any goods or services [*vide* S. 16(1)(f)]:

13. In the case of associated undertakings engaged in the same line of business, what is the percentage of the total production or supply of any goods or services in any Provinces, which they produced, distributed, sold or provided during the next preceding calendar year (19.....) [*vide* S. 16(1)(b)]:

14. If there is an acquisition by undertaking of the stocks or assets of any person or another undertaking or there is any merger of it with another undertaking, the effect in terms of percentage of market share of the total goods produced, supplied or distributed, or services provided in the market:

15. In the case of any merger of undertakings, the full particulars of the common management or common control or of the subsidiary nature of the one or the other:

16. If the undertaking is a bank or insurance company, whether it has granted any loan to any of its associated undertakings? If so, the amounts and the terms in details:

17. Loans and advances to subsidiary, associated companies and other undertakings, indicating the amounts and the terms thereof:

18. Full particulars of the facts and reasons for registration, under the provisions of Chapter V of the Ordinance:

Place: _____ Signature of Applicant.

Date: _____

VERIFICATION

I, _____ do hereby solemnly verify that what is stated in paragraphs 1 to 18 above is true to the best of my knowledge and belief and that I am submitting this Memorandum as _____

Place: _____ Signature/Signatures.

Date: _____

(To be completed by the Registrar)

1. Date of receipt of application _____
2. Date of registration _____
3. Register No. _____
4. Date of issue of Registration Certificate to the undertakings _____

Signature of Registrar

FORM II

[Vide rule 10(2)(b)]

MEMORANDUM

The Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970

PARTICULARS TO BE FURNISHED WITH APPLICATION FOR REGISTRATION OF INDIVIDUALS

1. Name of individual (if a Hindu undivided family, name of *Karta* or head of the family):

MONOPOLY CONTROL AUTHORITY RULES

2. Address:

3. Occupation:

4. Is the individual the owner or a partner, officer or director of an undertaking, or does the individual directly or indirectly hold or control shares carrying not less than twenty per cent. of the voting power in such undertaking? If so, give in the particulars of that undertaking, and of all other undertakings in which the individual holds similar position or voting power and the individual's connection with them in the light of section 2(2) of the Ordinance:

5. Does the individual hold or control shares carrying not less than fifty per cent. of the voting power of an undertaking the total value of whose assets is not less than one crore of rupees and which is owned by a public company?

6. Has the individual acquired the stock or assets of any other person or undertaking? If so, give details and state the effect in terms of percentage of market share of the total goods produced, supplied or distributed or services provided in the market:

7. Has the individual taken any loan from any person, Bank, insurance company or undertaking? If so, give details as to amounts and terms:

8. Has the individual given any loan to any person or undertaking? If so, give details as to amounts and terms:

9. Has the individual entered into any agreement as detailed in section 6(1) of the Ordinance? If so, give details:

10. Reasons for which the individual is subject to registration:

Place:

Date:

(Signature of Applicant)

VERIFICATION

I _____ do hereby solemnly verify that what is stated in paragraphs 1 to 10 above is true to the best of my knowledge and belief and that I am submitting this Memorandum as _____

Place:

Date:

(Signature/Signatures)

(To be completed by the Registrar)

1. Date of receipt of application _____
2. Date of registration _____
3. Registration No. _____
4. Date of issue of Registration Certificate to the individual _____

(Signature of Registrar)

FORM III

[Vide rule 10(2)(e)]

MEMORANDUM

*The Monopolies and Restrictive Trade Practices (Control and Prevention)
Ordinance, 1970*

PARTICULARS TO BE FURNISHED WITH APPLICATIONS FOR
REGISTRATION OF AGREEMENT/LICENCE OF PATENTS OR
TECHNOLOGY

1. Name and addresses of parties to the agreement/licence of patent or technology:

2. The whole of the terms of the agreement:--

In so far as the agreement is made by an instrument in writing a true copy of that agreement shall be annexed. In so far as the agreement is not so made in writing a memorandum in writing signed by the person by whom the particulars are furnished shall be annexed, giving full particulars of the agreement.

3. Details of the licence as enumerated under section 16(1)(e).

Place:

Date:

(Signature of Applicant).

VERIFICATION

I _____ do hereby solemnly verify that what is stated in paragraphs 1 to 3 above is true to the best of my knowledge and belief and that I am submitting this Memorandum as _____

Place:

(Signature/Signatures)

Date:

(To be completed by the Registrar)

1. Date of receipt of application _____

2. Date of registration _____

3. Registration No. _____

4. Date of issue of Registration Certificate. _____

(Signature of Registrar)

FORM VI

REGISTER OF INDIVIDUALS/HINDU UNDIVIDED FAMILIES

[Vide S. 2(1)(e) and S. 2(2) read with S. 16(1)(h)]

S. No.	Date of receipt of application	Name and address of applicant (individual) member of Hindu undivided family	Extent and nature of voting power held or control over an undertaking	Reason for Registration
1	2	3	4	5
	Date of registration and gist of order passed (File No.)	Particulars of variation	Particulars of cancellation	Remarks (Ref. Confidential Special part, if any)
	6	7	8	9

FORM VII

[Vide S. 2(1)(a) read with S. 16(1)(i), (j), (k) (l)]

S. No.	Date of receipt of application	Name and address of applicant	Name and addresses of all parties to the agreement	Whether true copy of agreement filed. If agreement not in writing, particulars thereof.	Scope of Licence vide S.16(1)(b)
1	2	3	4	5	6
	Reasons for registration	Date of registration and gist of order passed (File No.)	Particulars of variation	Particulars of cancellation	Remarks (Ref. Confidential Special part, if any)
	7	8	9	10	11

MONOPOLY CONTROL AUTHORITY (NET WORTH OF STOCKS AND SHARES) RULES, 1977

[Gazette of Pakistan, Extraordinary, Part II, 27th September, 1977]

S.R.O. 903(I)/77. In pursuance of sub-section (2) of section 12 of the Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970 (V of 1970) and in exercise of the powers conferred on it under section 24 of the said Ordinance the Monopoly Control Authority thereby makes the following rules:--

1. (1) These Rules may be called the Monopoly Control Authority (Net Worth of Stocks and Shares) Rules, 1977.

(2) They shall come into force at once.

2. Definitions. In these Rules unless there is anything repugnant in the subject or context,--

(a) "countable capital" means the paid up capital of a company as reduced by the aggregate of the paid up value of preference shares and of such other stocks and shares to which no voting power is attached;

(b) "free reserves" means all reserves *plus* unappropriated profit of a company excluding the following reserves, namely:--

(i) Reserve created on revaluation of fixed assets.

(ii) Goodwill Reserve.

(iii) Depreciation Reserve.

(iv) Gratuity Reserve.

(v) Workers Participation and Welfare Funds.

(vi) Reserve for Taxation to the extent of the actual tax liability of the company.

(vii) Any other reserve to meet any specific liability existing on the date of the balance-sheet.

3. Formula for determining net worth. (1) For the purposes of sub-section (2) of section 12 of the Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970 (V of 1970), the net worth of an ordinary stock or shares shall be determined by multiplying the face value of such stock or share by the aggregate of countable capital and the free reserves of the company as reduced by its losses, if any, and dividing the product by the countable capital.

(2) Free reserves and losses referred to in sub-rule (1) shall be determined from the latest audited balance sheet of the company.

[No. 39(1)MA/ADMD/77].

MONOPOLY CONTROL AUTHORITY (VALUE OF ASSETS) RULES, 1991

[*Gazette of Pakistan, Extraordinary, Part II, April 11, 1991*]

S.R.O. 163(KE)/91.--In exercise of the powers conferred by section 24 of the Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970 (V of 1970), read with section 4 thereof, the Monopoly Control Authority hereby makes the following rules, namely:-

1. **Short Title and Commencement.** (1) These rules may be called the Monopoly Control Authority (Value of Assets) Rules, 1991.
(2) They shall come into force at once.
2. **Total Value of Assets.**--For the purpose of clause (a) of section 4 of the Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970 (V of 1970), the amount of the total value of assets shall be not less than one hundred and fifty million rupees.
3. **Repeal.**--The Monopoly Control Authority (Value of Assets) Rules, 1978, are hereby repealed.

COMPANIES (REGISTRATION OFFICES) REGULATIONS, 1986

[*Gazette of Pakistan, Extraordinary, Part II, December 31, 1986*]

S.R.O. 1139(1)/86. (*Islamabad, the 30th December, 1986*).--In exercise of the powers conferred by sub-section (2) of section 466 of the Companies Ordinance, 1984 (XLVII of 1984), read with the Finance Division Notification No. S.R.O. 698(I)/86, dated the 2nd July, 1986, the Corporate Law Authority hereby makes the following regulations, namely:--

1. (1) These regulations may be called the Companies (Registration Offices) Regulations, 1986.

(2) They shall come into force at once.

2. In these regulations, unless there is anything repugnant in the subject or context,--

(a) "Annex" means an annex to these regulations;

(b) "Company Registration Office" means an office established by the Federal Government under sub-section (1) of section 466;

(c) "Ordinance" means the Companies Ordinance, 1984 (XLVII of 1984);

(d) "registrar concerned" means additional registrar, joint registrar, deputy registrar or assistant registrar who is in charge of the Company Registration Office in which the company is registered or in whose territorial jurisdiction the registered office is situated;

(e) "Registrar of Companies, Pakistan" means the registrar who is head of the organisation for the registration of companies in Pakistan;

(f) "Schedule" means a schedule to the Ordinance;

(g) "section" means a section of the Ordinance; and

(h) words and expressions used but not defined shall have the same meaning as in the Ordinance.

3. (1) For registration of companies and performing other duties under the Ordinance, the organisation for registration of companies shall, besides the office of the Registrar of Companies, Pakistan, have Company Registration Offices in the following towns with jurisdiction extending to companies, not being companies to which section 5 applies, having registered offices in the territories mentioned against each namely:--

Karachi: The Province of Sind.

Quetta: The Province of Baluchistan and the Provincially Administered Tribal Areas to which the executive authority of the Province of Baluchistan extends.

Peshawar: The Province of the North-West Frontier, the Federally Administered Tribal Areas and the Provincially Administered Tribal Areas to which the executive authority of the Province of the North-West Frontier extends.

Lahore: The Civil Divisions of Lahore, Faisalabad, Sargodha and Gujranwala in the Province of the Punjab.

Multan: The Civil Divisions of Multan, Bahawalpur and Dera Ghazi Khan in the Province of the Punjab.

Islamabad: The Civil Division of Rawalpindi in the Province of the Punjab and the Islamabad Capital Territory.

(2) The Company Registration Offices shall observe such working hours as may, from time to time, be approved by the Authority for these offices, and shall, with the exception of public holidays, be open, between the hours of 9 A.M. and 1 P.M. from Sundays to Thursdays, for transaction of business with the public.

(3) Every Company Registration Office shall have a seal for authentication of documents required for or in connection with the registration of companies:

Provided that the design of the seal shall require approval of the Registrar of Companies, Pakistan.

4. (1) The certificate of incorporation issued in pursuance of section 32 shall be in the form set out in Annex 'A'.

(2) Every company which is incorporated shall be assigned a registration number bearing the initial alphabet of the town in which the Company Registration Office concerned is situated and the general consecutive number appertaining to that office. The registration number shall be stated both in the certificate of incorporation of the company and the Register of Companies from the date to be specified by the Authority.

(3) Where a company changes its registered office from the territorial jurisdiction of one Company Registration Office to another, a new number pertaining to the latter office shall be assigned as if it were a new company incorporated in that office.

(4) Every company formed or incorporated outside Pakistan which has a place of business in Pakistan and files documents pursuant to the provisions contained in Part XIV of the Ordinance shall be assigned a number appearing to the Company Registration Office concerned in a separate series starting with the word "Foreign".

(5) The registrar concerned shall cause the fact of certificate of incorporation have been granted, the date of incorporation and the company registration number to be entered on the stamped copy of the memorandum of association under the dated signature of the registrar issuing the certificate and also cause a copy of the certificate of incorporation to be attached to the memorandum and articles of association of the company.

5. The certificate of incorporation for effecting the change of name of a company to be issued under section 40 shall be in the form set out in Annex 'B'.

6. (1) The registrar concerned shall for the purpose of section 127 cause the issue of certificate in the form set out in Annex 'C'.

(2) The registrar concerned shall for the purpose of sub-section (2) of section 146 cause the issue of certificate in the form set out in Annex 'D'.

7. (1) The registrar concerned shall examine or cause to be examined every document received in his office which is required or authorised by or under the Ordinance to be registered, recorded or filed with the registrar.

(2) If any document is filed with or prescribed to a Company Registration Office after the expiry of the period within which it was required or authorised to be filed or registered; not being particulars of documents requiring registration under sections 121, 122, 123, 124 and 129, the registrar concerned may, without absolving the defaulting company or person of any liability arising out of the default, delay or failure to comply, accept the document for record on payment of additional fee equal to three times the usual fee of the document specified in the Sixth Schedule.

(3) No document shall be accepted for registration, filing or record by the registrar concerned, an additional registrar, a joint registrar, a deputy registrar or an assistant if in his opinion, the same--

(a) contains any matter contrary to law, or does not otherwise comply with the requirements of law;

(b) is not complete owing to any defect, error or omission;

(c) is insufficiently legible or is written upon paper which is not durable; or

(d) is not properly authenticated.

(4) If a document is found defective or incomplete as aforesaid, the registrar may either require the company to rectify the defect or complete the document or file a revised document in the form and within the period to be specified by him or refuse to accept or register such document until the defect has been rectified, or, as the case may be, the document has been completed:

Provided that the registrar may for special reasons to be recorded in writing, instead of returning the document ask the company to depute a representative to rectify or complete the document as may be necessary.

8. (1) The registrar shall not register, file or record any document or make a record of any fact in respect of which a fee is payable under the Sixth Schedule until such fee has been paid and shall, pending the payment of such fee, act in the same way as if no such document had been tendered for registration, filing or record.

(2) When a document is accepted for being registered, filed or recorded, the registrar shall issue an acknowledgment in the form set out in Annex 'E'.

9. (1) The registrar shall make or cause to be made endorsement of the following particulars on every document registered, filed or recorded in his office, namely:

- (a) the number assigned to the company in the Register of Companies;
- (b) serial number (a separate serial number shall be assigned to each document);
- (c) name of the company;
- (d) brief description of the document including its enclosures; and
- (e) the date on which the document is registered, filed or recorded.

(2) Every endorsement referred to in sub-regulation (1) shall be signed by the registrar concerned or an additional registrar, a joint registrar, a deputy registrar, or an assistant registrar authorised by the registrar concerned and shall bear the official seal of the Company Registration Office.

10. (1) In every Company Registration Office there shall be maintained a Register of Companies in the form set out in Annex 'F' in which the names of the companies shall be entered in the order in which they are registered along with the Company Registration Number, date of incorporation and other particulars specified in the said form.

(2) In the pages allotted to each company in the Register, note shall be made of every document or fact, relating to the company, which is registered, recorded or filed with the Company Registration Office.

(3) The documents relating to any one company shall be kept together, distinct and separate from those of other companies.

(4) The documents relating to each company shall be kept in chronological order, that is to say, in the order of the dates on which they are received by the Company Registration office.

11. (1) The registrar concerned shall cause--

(a) an alphabetical index of the companies registered with the Company Registration Office concerned to be maintained in a register in the form set out in Annex 'G'; and

(b) an alphabetical index of companies registered with all the Company Registration Offices to be maintained in a register in the form set out in Annex 'H'.

(2) To enable Company Registration Offices to maintain the register referred to in clause (b) of sub-regulation (1), every Company Registration Office shall not later than the seventh day of each month send to all other Company Registration Offices and the Registrar of Companies, Pakistan, the following information relating to the preceding month, in respect of the companies registered with or having their registered offices within the territorial jurisdiction of each of those offices, that is to say,--

(i) in the case of companies incorporated under the Ordinance, the names of--

(a) new companies registered indicating date of incorporation in each case;

(b) companies which have changed their names indicating their old and new names;

(c) companies which have been finally dissolved under section 439;

(d) companies which have been finally wound up; and

(e) companies which have reported shifting of their registered offices from the jurisdiction of one Company Registration Office to another; and

(ii) in the case of foreign companies, the names of--

(a) companies which have established a place of business in Pakistan, with the name of country of origin and date of establishing office in Pakistan; and

(b) Companies which cease to have a place of business in Pakistan with date of ceasing to have a place of business in Pakistan.

12. In addition to the registers to be maintained under regulations 10 and 11, every Company Registration Office shall maintain the following registers in the forms set out in the Annex mentioned against each:--

(1) Register of foreign companies	Annex 'I'
(2) Register of mortgages, charges, etc.	Annex 'J'
(3) Chronological Index of mortgages, charges etc; entered in the register of mortgages, etc.	Annex 'K'
(4) Register of companies gone into--liquidation	Annex 'L'
(5) Register of companies whose names are struck off the register of companies under section 439	Annex 'M'
(6) Register of fees, etc.	Annex 'N'
(7) Copying register	Annex 'O'
(8) Inspection register	Annex 'P'
(9) Register of prosecutions and court-cases	Annex 'Q'
(10) Check register for annual general meeting and Issuance of accounts by public companies	Annex 'R'
(11) Check register for issuance of half yearly accounts by listed companies	Annex 'S'
(12) Check register for Annual General meeting by private companies	Annex 'T'
(13) Check Register for statutory meeting/report	Annex 'U'

13. (1) The registrar shall permit members of the public to inspect registers and records of documents as under the Ordinance they are entitled to inspect,

provided that, before such permission is granted, the inspection fee prescribed in the Sixth Schedule shall have been paid.

(2) The inspection of the documents shall be allowed during the time specified for transaction of business with the public in the presence of the registrar or an official authorised in each individual case by the registrar concerned in this behalf.

(3) The registrar or other authorised official supervising the inspection may permit notes of the inspected documents to be taken, but verbatim copy of the document inspected may not be taken.

14. The registrar concerned shall, on the application of a person, cause copies of documents to be granted as authorised under the Ordinance on payment of fee prescribed in the Sixth Schedule.

15. Every certificate or copy granted under the provisions of the Ordinance shall be signed and dated by the registrar concerned or an additional registrar, a joint registrar, a deputy registrar or an assistant registrar, authorised for the purpose by the registrar concerned and shall bear official seal of the Company Registration Office.

16. The registrar shall take notice of any omission to file or register documents on due date or any other infraction of the law.

17. The registrar shall institute or cause to be instituted such enquiries in respect of any matter as may be necessary to obtain information of evidence respecting defaults or any information of the law.

18. The Registrar of Companies, Pakistan, the registrar concerned or any other person authorised by any one of them in this behalf may institute or cause to be instituted any legal proceedings or defend or conduct or cause to be defended or conducted any prosecution or other legal proceeding under the Ordinance.

19. (1) The Authority or the Registrar of Companies, Pakistan, may assign any of the duties under the Ordinance, the rules made thereunder or these regulations and generally regulate performance of duties and issue directions to the registrar concerned or officials subordinate to the registrar concerned in such manner as it or he may think fit and they shall follow and observe the orders and instructions of the Authority or the Registrar, as the case may be.

(2) Subject to the directions of the Authority and the Registrar of Companies, Pakistan, the registrar concerned may assign any duties under the Ordinance, the rules made thereunder or these regulations and generally regulate performance of duties and issue directions to any additional registrar, joint registrar, deputy registrar or assistant registrar, where such officers have been appointed in a particular Company Registration Office, and other officials of the Company Registration Offices as he may think fit and they shall follow and observe the orders and instructions of the registrar concerned and all references in these regulations to registrar concerned shall be construed as references to any assistant, deputy, joint or additional registrar to whom the particular duty has been assigned by the registrar concerned by a general or special order.

20. Where copy of an application addressed to the Authority or the Registrar of Companies, Pakistan is received in a Company Registration Office in pursuance of rule 32 of the Companies (General Provisions and Form) Rules, 1985, the registrar concerned shall, as soon as may be possible but not later than seventh working day after the receipt of the application in his office, forward to the Authority or the Registrar, as the case may be, his parawise comments on the application together with other information and documents which in his opinion, need to be taken into consideration while disposing of the application:

Provided that the Authority or, as the case may be, the Registrar of Companies, Pakistan may dispose of an application without waiting for comments of the registrar concerned, if so deemed fit.

21. The following registers and documents relating all accompanys whether in existence or dissolved kept in the Company Registration Offices under the Ordinance shall be reserved permanently, namely:-

- (1) Register of Companies Annex 'F'.
- (2) The Index to the Register of Companies registered in the Company Registration Office Annex 'G'.
- (3) The Index to the Register of Companies registered in Pakistan Annex 'H'.
- (4) The Register of Foreign Companies Annex 'I'.
- (5) The Register of Mortgages, charges, etc. Annex 'J'.
- (6) The Chronological Index of Mortgages, charges, etc. Annex 'K'.
- (7) The Register of Destruction of Documents and records relating to companies finally wound up/dissolved Annex 'X'.
- (8) The Register of Destruction of Documents and Records relating to companies in existence Annex 'Y'.
- (9) All statements, documents, registers, refund orders, correspondence and papers relating to Companies Liquidation Account to which section 432 applies; and
- (10) The registered documents which relate to any company in existence and which are specified in Annex 'V'.

(2) Subject to the previous approval of the Registrar of Companies, Pakistan, the company records kept in a Company Registration Office under the Ordinance may be destroyed, after the expiration of the period of their preservation as

specified in Annex W, if the same are not of sufficient public value to justify their further preservation, or have not been ordered by the Authority or any court to be preserved for a longer period, or are not likely to be needed in connection with any pending proceedings, before any court or authority, of which the Company Registration Office has notice.

Explanation. A company shall be deemed to be in existence unless its name has been struck off the register under sub-section (5) of section 439 of the Ordinance or unless it has been fully wound up and finally dissolved.

(3) Every Company Registration Office shall maintain the registers set out in the forms in Annex 'X' and Annex 'Y' wherein brief particulars of the company records destroyed and the date and mode of destruction shall be entered under dated signature of the registrar concerned or an additional registrar, a joint registrar, a deputy registrar or an assistant registrar designated by the registrar concerned for the purpose and no part of the records aforesaid shall be destroyed without a simultaneous entry having been made in either the form in Annex 'X' or the form in Annex 'Y' as may be appropriate.

22. (1) Every registrar concerned shall furnish to the Registrar of Companies, Pakistan, annually, by 31st July each year, a report on the working and administration of the Ordinance and other related matters, concerning the activities of the Company Registration Office concerned in such form and in such manner as may from time to time be specified by the Registrar of Companies, Pakistan.

(2) The Registrar of Companies, Pakistan shall furnish his annual report to the Authority by 31st August each year in such form and in such manner as may from time to time be specified by the Authority.

23. The Companies (Registration Offices) Regulations, 1978 are hereby repealed.

ANNEXURES

Annex 'A' to 'Y'

See: Gazette of Pakistan, Extraordinary, Part II, December 31, 1986.

MODARABA COMPANIES AND MODARABAS (FLOATATION AND CONTROL) ORDINANCE, 1980

ORDINANCE XXXI OF 1980

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

[Gazette of Pakistan, Extraordinary, Part I, 26th June, 1980]

No. F. 17(I)/80-Pub. The following Ordinance made by the President on the 26th June, 1980 is hereby published for general information:--

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;

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 Modarabas (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,--

(a) "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;

(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 this Ordinance shall have the same meaning as in Companies Act, 1913 (VII of 1913).

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

COMMENTS

1. **Registrar.** The Federal Government has appointed, the Registrar, Joint Stock Companies as the Registrar of Modaraba Companies.¹

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.** 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 ²[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

1. Notification No. 2(22) R.O. (G)/79 846 dated 5.7.1980.

2. Subs. by Ord. 13 of 1985. S. 2.

- (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.

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 Modaraba Certificates 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 other 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 sub-section (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 prospects of the modaraba and the amount of profits to be distributed to the certificate holders.

(2) In addition to the documents referred to 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 per cent. 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 per cent. of such net annual profits computed in the manner to be prescribed.

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 sub-section (1) may prefer an appeal to the Federal Government within thirty days of the date of the order.

³[(5) An appeal preferred under sub-section (4) shall be disposed of by the Federal Government after giving the appellant an opportunity of being heard.]

20. Appointment of administrator. (1) If--

3: Added by Act. 4 of 1985, S. 2.

- (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
- (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 Federal Government.

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 per cent 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 of 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.

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 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 Federal Government within thirty days of the day on which the decision is given.

[(3) An appeal preferred under sub-section (2) shall be disposed of by the Federal Government 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 per cent. 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;
- (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 Tribunals 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 Tribunal 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 transaction 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 (Act V of 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.

COMMENTS

1. **Banking Tribunals Ordinance, jurisdiction of.** Modarba Companies functioning under Modaraba Companies and Modarba (Floation and Control) Ordinance (1980) would fall within the purview of "banking company" as gives by S.2 of the Ordinance, even if Modaraba cannot qualify as a company as defined in Banking Companies Ordinance (1962) or Companies Ordinance (1984). Therefore, claims which cannot be filed before Tribunal to be constituted under Ordinance (1980), can be filed before Banking Tribunals constituted under Banking Tribunals Ordinance (1984).⁵

26. **Procedure of the Tribunal.** 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 of 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 and 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.

⁵ NLR 1997 UC 363.

(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 S. 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. If any person—

- (a) refuses or fails to furnish any document, return or information which he is required to furnish by or under this Ordinance; or
- (b) refuses or fails to comply with any condition 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 sub-section (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.

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. 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 the Modaraba Certificates.

38. Power of Federal Government to exempt, etc. The Federal Government may, by notification in the official Gazette, exempt from the requirement of subsections (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 by 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 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;

- (xv) charging and determination of fees payable under this Ordinance; and
(xvi) such other matters as are to be or may be prescribed.

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.

THE MODARABA COMPANIES AND MODARABA RULES

S.R.O. 83/(I)81, dated 26th January, 1981. (Gaz. Pak. Extra, Pt. II, 26.1.81). In exercise of the powers conferred by section 41 of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980), the Federal Government is pleased to make the following rules, namely:--

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

(2) They shall come into force at once.

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

(a) "Advocate" means a person entered in any role under the Provisions of the Legal Practitioners and Bar Councils Act, 1973 (XXXV of 1973);

(b) "Certificate holders" means holders of Modaraba Certificates;

(c) "Chairman" means the Chairman of the Religious Board;

(d) "Form" means a form set out in the First Schedule;

(e) "Member" means a member of the Religious Board and includes the Chairman;

(f) "Ordinance" means the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980);

(g) "Religious Board" means the Board constituted under section 9;

(h) "section" means a section of the Ordinance;

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

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

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

(a) to receive applications for registration as modaraba companies;

(b) to issue to a modaraba company a Certificate of Registration which indicates the serial number of registration, year of registration and office of issue and has the official seal of the Registrar affixed thereto;

(c) to provide secretarial services to the Religious Board;

(d) to refer the applications of floatation of modaraba which shall be in Form I, to the Religious Board and obtain their certificate in writing in Form II that the modaraba is not a business opposed to the Injunctions of Islam;

- (e) to receive applications for and grant Certificate of Authorization in Form III for floatation of modaraba on such conditions as he may deem fit in keeping with the provisions of section 11;
- (f) to lay-down, receive and examine all reports, accounts and other documents referred to in section 14 and to pass orders for and receive such additional documents or reports or information as may be considered necessary;
- (g) to issue a certificate in Form IV on receipt of a declaration in Form V that Modaraba Certificates have been allotted in an amount not less than the minimum amount stated in the prospectus to be raised in order to provide for the business operations and expenses;
- (h) to allow issue of certificates of a modaraba at a premium or at a discount.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) travelling and daily allowances as admissible to Grade 20 officers of Federal Government.

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

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

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

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

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

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

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

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

(2) The books of account shall be kept at the registered office of the modaraba company or at such other place as may be authorised by the Registrar.

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

(4) Every balance sheet of a modaraba shall give a true and fair view of the state of affairs of the modaraba as at the end of its financial year and every profit and loss account and every statement of changes in the financial position of a modaraba shall respectively give a true and fair view of the result of operations and of the changes in its financial position for the year then ended.

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

(2) The balance-sheet and profit and loss account included in the annual report prepared by the modaraba company shall comply with the requirements of the Third Schedule as nearly as possible.

(3) The balance-sheet and profit and loss account and statement of financial changes shall be audited by the auditor of the modaraba and the report of the auditor shall be as prescribed in Form XI.

10 Submission of periodical reports. Every modaraba company shall, within two months of the close of the first half of the financial year of each modaraba prepare in the manner as nearly as possible and giving such information as required by the Third Schedule and transmit by registered post to the Registrar and under postal certificate to its Certificate holders a profit and loss account and a statement of financial changes for and a balance-sheet as at the end of, that half year, whether audited or otherwise.

11. Annual balance-sheet. (1) The directors of every modaraba company shall at some date not later than eighteen months after the floatation of such

modaraba and subsequently once at least in every calendar year prepare an annual balance-sheet and profit and loss account and a statement of changes in financial position in respect of each modaraba for the period in the case of the first account since the floatation of the modaraba and in any other case since the preceding account.

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

12. Authentication of balance-sheet. (1) Save as provided by sub-rule (2), the balance-sheet and profit and loss account and statement of changes in financial position shall be signed by the Chief Executive and two directors of the modaraba company.

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

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

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

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

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

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

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

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

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

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

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

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

(3) No distribution shall be made otherwise than out of profits of the year or any other undistributed profits or realised capital gains.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

dividend as may be declared subsequent to the date of issue of such new certificates.

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

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

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

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

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

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

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

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

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

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

22. Register of certificate holders. (1) Every modaraba company shall maintain a register of "Certificate holders" in the manner required in respect of register of share-holders under the Companies Act, 1913.

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

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

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

- (b) for the purposes of clause (a) notice to the transferee shall be deemed to have been duly given if despatched by prepaid post to the transferee at the address given in the instrument of transfer and shall be deemed to have been delivered in the ordinary course of post;
- (c) it shall not be lawful for the modaraba company to register transfer of a certificate of the modaraba unless the proper instrument of transferee duly stamped and executed by the transferor and the transferee has been delivered to the modaraba company alongwith the relative modaraba certificate:

Provided that, where it is proved to the satisfaction of the directors of the modaraba company that an instrument of transfer signed by the transferor and transferee has been lost, the modaraba company may, if its directors think fit on an application in writing made by the transferee and bearing the stamp required for an instrument of transfer, register the transfer with notice to the transferor on such terms as to indemnity as the directors of the modaraba company may think fit;

- (d) if a modaraba company refuses to register the transfer of any certificate, the modaraba company shall, within two months from the date on which the instrument of transfer was lodged with the modaraba company, send to the transferee and the transferor notice of the refusal indicating reason for such refusal.

(4) The following provisions shall apply to succession to a certificate in the case of death of the holder, namely:-

- (a) the legal heirs of a deceased Certificate-holder, according to Shariat shall be the only persons to be recognized by the modaraba company as having any title to his certificates;
- (b) any person becoming entitled to a certificate in consequence of the death of the Certificate-holder may be registered as a Certificate-holder

on producing such evidence as may be required by the modaraba company;

- (c) any person who becomes entitled to a certificate in consequence of the death of the holder may, instead of being registered as the holder himself, elect to have some other person to be named by him registered as a transferee of such certificate;
- (d) the person electing to have some other person registered as a holder in accordance with the above provision shall testify to such election by executing an instrument of transfer in favour of his nominee;
- (e) such instrument of transfer shall be presented to the modaraba company together with such other evidence as the directors of the company may require to prove the title of the transferee, and thereupon the transferee shall be registered as holder.

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

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

- (a) the amount of the certificates of the modaraba and the number of certificates into which it is divided;
- (b) the number of certificates taken from the commencement of the modaraba up to the date of the return;
- (c) the amount called up on each certificate;
- (d) the total amount of calls received;
- (e) the total amount of calls unpaid;
- (f) the total amount of the sums (if any) paid by way of commission in respect of any certificates or allowed by way of discount in respect of any certificates since the date of the last return or so much thereof as has not been written off at the date of the return;

- (g) the names and addresses of the persons who at the date of the return are the directors of the modaraba company and of the persons (if any) who at the said date are the managers or officers of the modaraba company, and the changes in the personnel of the directors, managers and officers of the modaraba company since the last return together with the dates on which they took place; and
- (h) the total amount of debt due from the modaraba in respect of all mortgages and charges which are required to be registered with the Registrar under these rules.

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

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

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

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

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

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

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

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

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

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

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

- (a) a mortgage or charge for the purpose of securing any issue of Participation Term Certificate (PTC); or
- (b) a mortgage or charge on any immovable property wherever situate, or any interest therein; or

- (c) a mortgage or charge on any book debts of the modaraba; or
- (d) a mortgage or charge, not being a pledge, on any movable property of the modaraba except stock-in-trade; or
- (e) a floating charge on the undertaking or property of the modaraba; shall so far as any security on the modaraba property or undertaking is **thereby conferred**, be void against the liquidator and any creditor of the modaraba, unless the required particulars of the mortgage or charge with the instrument, if any, by which the mortgage or charge is created or evidenced or a verified copy thereof, are filed with the Registrar for registration in the manner required by these rules within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and on a mortgage or charge thus becoming void under this rule the money secured thereby shall immediately become payable:

Provided that:-

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

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

28. Registration of charge on properties. Whenever the modaraba acquires any property which is subject to a charge of any such kind as would, if it had been created by the modaraba after the acquisition of the property, have been required to be registered under these rules, the modaraba shall cause the required particulars of the charge, together with certified copy of the instrument, if any, by

which the charge was created or is evidenced, to be delivered to the Registrar for registration in the manner required by these rules within twenty-one days after the date on which the acquisition is completed:

Provided that, if the property is situate and the charge was created outside Pakistan, twenty-one days after the date on which the copy of the instrument could in due course of post, and if despatched with due diligence, have been received in Pakistan shall be substituted for twenty-one days after completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the Registrar.

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

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

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

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

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

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

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

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

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

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

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

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

(2) The Committee shall consist of:

- (a) a Chairman to be nominated by the Federal Government;
- (b) the Registrar;
- (c) a nominee of the Institute of Chartered Accountants of Pakistan;
- (d) the President of the Federation of Pakistan, Chambers of Commerce and Industry;
- (e) the President of the Karachi or Lahore Stock Exchange, as the Federal Government may specify;
- (f) the Managing Director of Bankers Equity Limited or National Investment (Unit) Trust or of the Investment Corporation of Pakistan, as the Federal Government may specify; and

(g) not more than five other persons to be appointed by the Federal Government.

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

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

THE FIRST SCHEDULE

FORM I

(Section 8)

[See rule 3(2)(d)]

To

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

Dear sir,

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

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

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

We undertake:

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

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

Yours faithfully,

ANNEX. TO FORM No.1

(See section 8)

[See rule 3(2)(d)]

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

Verification and signatures
of all directors

Dated 19

FORM NO.-II

[See rule 3(2)(d)]

CERTIFICATE

(See section 18)

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

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

Issued under our signatures and seal.

this day of 19 .

Signed.

Chairman.

Member.

Member.

FORM No. III

(See section 11)

[See rule 3(2)(e)]

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

Issued under my signatures and seal

this day of 19 .

Conditions:

1. The modaraba shall be floated within twelve months from the date of this authorisation.
2. The modaraba shall not undertake any business other than those specified in the prospectus.

3. The modaraba company shall not disinvest or create encumbrance in favour of any person any part of the investment in the modaraba.
4. The modaraba certificates shall be listed for trading in Stock Exchange.
5. Other conditions.

FORM No. IV

[See rule 3(2)(g)]

CERTIFICATE OF MINIMUM SUBSCRIPTION

Certified:--

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

Issued under my signature and seal

this day of 19 ..

Registrar of Modaraba
Companies and Modarabas

FORM No. V

[See rule 3(2)(g)]

Declaration before commencing business in case of a Modaraba issuing a prospectus.

The Modaraba Companies and Modaraba (Registration and Floatation) Ordinance, 1980.

[See section 13(2)]

Filing fee Rs. 3

Name of Modaraba Company.....

Name of Modaraba.....

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

Presented for filing by

I, s/o

of

(address)

being the Chief Executive of the

Modaraba Company do solemnly and sincerely declare:--

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

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

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

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

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

Signature

(Chief Executive)

Dated 19 .

FORM No. VI

[See rule 3(5)]

ACKNOWLEDGMENT OF FILING

No. AR-1.

Islamabad the

19

In the office of the Registrar of Modaraba Companies and Modaraba.

In the matter of

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

Registrar of the Modaraba
Companies and Modarabas

or

other authorised officer.

Fee Rs.

FORM No. VII

[See rule 3(8)]

REGISTER OF MODARABA COMPANIES

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

PARTICULARS OF DOCUMENTS FILED

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

Particulars of modaraba

Name of modaraba

No. and date of authorisation

FORM No.VIII

[See rule 3(8)]

REGISTER OF MODARABA

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

PARTICULARS OF DOCUMENTS FILED

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

FORM No. IX

[See rule 4(1)]

APPLICATION FOR REGISTRATION OF MODARABA COMPANY

Dated 19 ..

To

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

Dear Sir,

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

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

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

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

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

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

Yours faithfully,

Verification by

.....

Oath Commissioner.

ANNEX TO FORM No. IX

[See rule 4(1)]

I. Particulars of the Modaraba Company

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

II. Particulars of Directors and Officers

1. Full names, any former names, Father's/Husband's name, nationality, full residential and business addresses and details of other directorships and occupations of all directors and officers including Chief Executive and Chairman of the Board indicating their respective designation and name of firms in which any one is a partner.
2. Names of companies, firms or organisations of which the aforesaid directors and officers have been directors, managers, officers, employees or partners in the past.

3. Financial standing professional qualifications and experience of persons mentioned in (1) above, supported by documentary evidence.

4. Whether any aforesaid person have ever been convicted of fraud or breach of trust or of an offence involving moral turpitude or **removed** from service, if so full particulars thereof.

5. Whether any person referred to in(1) above or any company or firm in which he has been associated in the past has been adjudicated an insolvent or has suspended payment or defaulted in making payments or has compounded with his or their creditor or gone into liquidation. If so, full particulars thereof.

6. Share-holding or other investment of each of the person referred to in (1) above in the company.

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

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

Dated 19 ..

All Directors.

Following certified documents should be appended:--

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

FORM No. X

[See rule 4(4)]

Serial Number

OFFICE OF THE
REGISTRATION CERTIFICATE

(See sections 4 and 6)

Certified that having considered the application for registration under section 6 of the Ordinance made by and being satisfied that the said is eligible for registration and further being satisfied that it would be in the public interest so to do, I, in exercise of the powers, conferred under section 6 of the

Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 do hereby grant registration to..... subject to the fulfilment of the conditions stated hereinbelow or that may be prescribed or imposed hereafter from time to time. Issued under my signatures and seal.

this..... day of 19 ..

Conditions:

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

FORM No. XI •

[See rule 9(3)]

AUDITORS' REPORT TO THE CERTIFICATE-HOLDER

We have audited the annexed Balance Sheet as at19 .. and the related Profit and Loss Account and *Statement of Changes in Financial Position/Statement of Sources and Application of Funds together with the Notes to the Accounts for the year ended of Modaraba which are modaraba company's (name of the modaraba company to be indicated) representation and we state that we have obtained all the information and explanation which we required and, after due verification thereof, we report that:

- (a) In our opinion proper books of account have been kept by the modaraba company in respect of Modaraba as required by the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980, and Modaraba Companies and Modaraba Rules, 1981;
- (b) In our opinion, the Balance Sheet and the Profit and Loss Account have been drawn up in conformity with the Modaraba Companies and

* Delete as appropriate.

Modaraba (Floatation and Control) Ordinance, 1980, and Modaraba Companies and Modaraba Rules, 1981; and

- (c) In our opinion and to the best of our information and according to the explanations given to us;
- (i) The Balance Sheet and the related Profit and Loss Account and *Statement of Changes in Financial Position/Statement of Sources and Application of funds, which are in agreement with the books of account, exhibit respectively a true and fair view of the state of the Modaraba's affairs as at 19 and the *Profit/Loss and the changes in the *Financial Position/Sources and Application of Funds for the year ended on that date;
- (ii) Zakat deductible at source under the Zakat and Ushr Ordinance, 1980, has been deducted by the Modaraba and deposited in the Central Zakat Fund established under section 7 of that Ordinance; and
- (iii) the business conducted, investments made and expenditure incurred by the Modaraba are in accordance with the objects, terms and conditions of the Modaraba.

Place

19

Chartered Accountants

FORM No. XII

(See rule 14)

-----Modaraba

Pattern of holdings of the certificates by the certificate-holders as at--19 .

Number of Certificate-holders	Certificate holders	Total certificates held
From 1 to	50 Certificates	
From 51 to	100	"
From 101 to	500	"
From 501 to	1000	"
From 1001 to	5000	"
From 5001 to	10000	"
From 10001 to	above	"

* Delete as appropriate.

Categories of certificate-holders	Number	Certificates held	%
Individuals	...		
Investment Companies	...		
Insurance Companies	...		
Joint Stock Companies	...		
Financial Institutions	...		
Modaraba Company	...		
Others (to be specified)			

²[THE SECOND SCHEDULE

[See rule 3(18)]

SCALE OF FEES

1	2	3	4	5
			Rs.	Rs.
1.	For registration of a modaraba Company...	(i) At the time of registration..	15,000	Rs
		(ii) Renewal annually in the month of January	10,000	
2.	Application for authorization to float modaraba;	(i) where the nominal amount does not exceed Rs. 2.5 million..	Perpetual	Morethan 5 years
		(ii) where the nominal amount exceeds Rs. 2.5 million but does not exceed Rs. 5 million..	25,000	Upto five years
			50,000	15,000
			30,000	20,000

2. Second Schedule Subs. by S.R.O. 123(1)/192 dated 15.2.1992.

	50,000 <i>plus</i> 5,000 for every addition- al Rs. 1 million	30,000 <i>plus</i> 3,000 for every addition- al Rs.1 million	20,000 <i>plus</i> 2,000 for every addition- al Rs.1 million.
(iii) where the nominal amount exceeds Rs. 5 million...			
3. For filing, recording or registering any document or fact required to be filed with, recorded by or registered with Registrar.			Rs. 200 for each document of fact.
4. For application for enquiry...			Rs. 500
5. For claim against modaraba company by modaraba certificate-holders referred to the Tribunal.			
6. For any other application before the Tribunal other than an application by Registrar, or before the Registrar by any person...			Rs. 1,000
7. For inspection of records...			Rs. 1,000
8. For certified copy of any document or extract at the rate of...			Rs. 50
			Rs. 20 per page or part thereof subject to a minimum of Rs. 50.]

THE THIRD SCHEDULE

[See rule 9(2)]

GENERAL PROVISIONS AS TO BALANCE SHEET AND PROFIT AND LOSS ACCOUNT

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

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

(i) tangible:

- (a) land (distinguishing between free-hold and lease-hold);
- (b) buildings (distinguishing between buildings on free-hold land and those on lease-hold land);
- (c) plant and machinery;
- (d) furniture and fittings;
- (e) vehicles;

- (f) capital work in progress; and
- (g) others;
- (ii) intangible:
 - (a) goodwill;
 - (b) patents, copyright, trade marks and designs; and
 - (c) others.

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

(C) In case of revaluation:

- (a) In the year of valuation the basis of revaluation and by whom revalued, e.g. independent professionals or modaraba company management and particulars of person or persons by whom revalued should be additionally disclosed (in the later year, the basis of revaluation).
- (b) In the account for the period subsequent to the period of valuation, disclosure be restricted to total amount of revaluation, year of revaluation and the revaluation element included in the book value.

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

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

4. Investment, loans and advances. (A) There shall be shown under separate sub-heads the aggregate amount respectively of the modaraba's:

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

- (v) investments in PTC; and
- (vi) other investments, loans and advances.

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

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

(D) There shall be stated under sub-head 4 (A)(iii) the names of the unquoted companies and modarabas (in every case with the name of the modaraba company) in whose shares or certificates, investments have been made and the nature and extent of the investment made in each case, showing separately, shares of different classes and of different paid-up values. Value of investment in shares of unquoted companies and modarabas calculated by reference to net assets of the investee unquoted companies and modaraba on the basis of the latest available audited accounts (the period of which to be indicated) of such companies or modaraba and the names of their auditors to be disclosed.

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

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

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

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

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

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

- (i) stores and spare parts;
- (ii) loose tools;

(iii) stock-in-trade, distinguishing where practicable, between:

- (a) stock of raw materials and components;
- (b) work in progress;
- (c) stock of finished products; and
- (d) other stock.

(iv) trade debts, which shall include amounts due in respect of goods sold or services rendered or in respect of other contracted obligations but shall not include the amounts which are in the nature of loans or advances. Debts considered good and debts considered doubtful or bad shall be separately stated. Debts considered good shall be distinguished between those which are secured and those for which the company holds no security other than the debtor's personal security,

(v) loans and advances due for repayment within a period of twelve months from the date of the balance-sheet showing separately the amounts due from subsidiaries, controlled firms and other associated undertakings and also the amounts lent out to employees of the modaraba. Loans and advances considered good and loans and advances, considered doubtful or bad shall be separately stated;

(vi) trade deposits and short term prepayments for which services or benefits are to be received within twelve months from the date of the balance-sheet and current account balances with statutory authorities;

(vii) bills receivable;

(viii) balance on current account with the officers and employees of the modaraba, the maximum amount held by any of them at any time since the date of incorporation or since the date of the previous balance-sheet, whichever is the later, being stated by way of a note. Such maximum amounts to be calculated by reference to months-end balance;

(ix) tax refunds due from Government, showing separately excise duties, customs duties, sales taxes, etc.; and

(x) cash and bank balances, distinguishing between:

- (a) amount in hand;
- (b) amount in transit; and
- (c) balance with banks showing nature of balance, e.g. current, deposit, etc.

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

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

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

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

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

- (i) reserves, distinguishing between capital reserves and revenue reserves. Capital reserves shall include certificate premium account, surplus on revaluation of fixed assets, profit prior to certificate floatation or on issue of forfeited certificates or any reserve not available for distribution by way of revenue profit (to be specified), while revenue reserves shall include general reserve, profit distribution equalisation reserve, other reserves, created out of profit (to be specified), and unappropriated profit, i.e. credit balance of profit and loss account after appropriation for the period to the date of balance-sheet. Additions to and deductions from each item of reserves shall be shown in the balance-sheet under the respective items unless they are disclosed in the profit and loss account or a statement or a report annexed thereto. Only revaluation element included in the book value of the fixed assets at the balance-sheet date be treated as capital reserves

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

- (i) authorised amount of certificates;
- (ii) issued amount of certificates, stating the number and value;
- (iii) called up value of certificate and the amount called up;
- (iv) calls unpaid as a deduction from called up value of certificates, distinguishing calls unpaid by:
 - (a) modaraba company, its directors and officers and employees;
 - (b) officers and employees of the modaraba; and
 - (c) others.
- (v) paid-up certificates, distinguishing, between:
 - (a) certificates allotted for consideration paid in cash;

(b) certificates allotted for consideration other than cash; and

(c) bonus certificates stating the number and value.

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

(a) the period during which it is exercisable;

(b) the price to be paid for certificates subscribed for under it.

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

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

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

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

(C) Where any of the modaraba's PTC are held by a nominee of, or a trustee for the modaraba, the amount thereof, calculated on the same basis as the total amount standing in the balance-sheet in respect of the PTC of that class, shall unless and until the PTC so held and re-issued or cancelled, be shown as deduction from the total by way of a note.

9. **Long-term Profit and Loss sharing loans (PLS) and deferred liabilities.**

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

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

(B) Long-term (PLS) loans shall be classified as secured and unsecured and under each class shall be shown separately:

(i) PLS loans from banking companies and other financial institutions;

(ii) PLS loans from subsidiary companies, controlled firms and other associated undertakings;

(iii) PLS loans from modaraba company, its directors (including Chief Executive), officers and employees; and

(iv) other PLS loans.

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

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

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

- (i) Short term PLS loans, distinguishing between secured and un-secured and between PLS loans taken from--
 - (a) banking companies and other financial institutions;
 - (b) subsidiary companies, controlled firms and other associated undertakings;
 - (c) directors including Chief Executive, officers and employees of modaraba and modaraba company.
- (ii) instalments of long-term debt due;
- (iii) others;
- (iv) deposits;
- (v) credits;
- (vi) accrued expenses;
- (vii) bills payable;
- (viii) advance payments and unexpired discounts for the portion for which value is still to be given, e.g. in the case of newspapers, clubs and steamship companies;
- (ix) profit accrued on PTC;
- (x) other liabilities if any (to be specified), e.g. unclaimed profit distribution unpaid profit distribution;
- (xi) provision for taxation showing separately excise duties, customs duties, sale-tax, income-tax, etc.;
- (xii) proposed profit distribution; and
- (xiii) other provisions, if any (to be specified).

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

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

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

- (i) Particulars of any charge on the assets of the modaraba to secure the liabilities of any other persons, including, where practicable the amount secured.
- (ii) The general nature of any claim not acknowledged as debt and other contingent liabilities not provided for and, where practicable, the aggregate amount or estimated amount of those liabilities, if it is material.
- (iii) Where practicable the aggregate amount or estimated amount, if it is material, of contracts for capital expenditure, so far as not provided for.
- (iv) If in the opinion of the directors of modaraba company any of the current assets have not a value, on realisation in the ordinary course of the modaraba's business, at least equal to the amount at which they are stated, the fact that they are of that opinion.
- (v) The basis on which foreign currencies have been converted into rupees, where the amount of the assets or liabilities affected is material.
- (vi) The basis on which the amount, if any, set aside for Pakistan income-tax is computed.
- (vii) Except in the case of the first balance-sheet, the corresponding amounts at the end of the immediately preceding financial year for all items shown in the balance sheet. This requirement shall, in the case of modaraba preparing quarterly or half-yearly accounts, relate to the balance sheet as on the last day of the period which ended on the corresponding date of the immediately preceding year.
- (viii) Other sums for which the modaraba is contingently liable. The aggregate amount of any guarantees given by the modaraba on behalf of the managers or other officers of the modaraba or any of them severally or jointly with any other person shall be stated separately, and, where practicable, the general nature and amount of each such contingent liability, if material, shall also be specified.

- (ix) Where determinable, the capacity of the industrial unit, actual production and the reasons for shortfall, if any, except in a case where the Registrar upon an application agree that such information need not be disclosed in the public interest.
- (x) The general nature of any credit facilities available to the modaraba under any contract, other than trade credit available in the ordinary course of business, and not availed of at the date of the balance sheet.

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

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

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

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

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

PART II

REQUIREMENT AS TO PROFIT AND LOSS ACCOUNT

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

(A) (i) the turnover, that is, the aggregate amount for which sales are effected by the modaraba, and the gross income derived from rendering, giving or supplying services or benefits, and showing as deduction therefrom--

(a) commission paid to selling agents; and

(b) brokerage and discount on sales, other than the usual trade discount;

(ii) income from investments, showing separately income from each subsidiary company, from each controlled firm, from each associated undertaking and from other investments;

(iii) income arising from PTC;

(iv) profit on sale of investments;

(v) profit on sale of fixed assets;

(vi) profit in respect of transactions of an exceptional or non-recurring nature, not usually undertaken by the modaraba or not envisaged in the normal nature of business; and

(vi) other income, showing separately every material item and the nature of each such item;

(B) (i) the value of stock-in-trade, including raw materials and components, work in progress and finished products as at the commencement and the value at the end of the period;

(ii) purchase of raw materials and components and finished products;

(C) (i) stores and spare parts consumed;

(ii) fuel and power;

(iii) salaries and wages (including bonus, contribution to provident and other funds), and expenses on staff welfare, distinguishing between manufacturing salaries and wages, if any, and other salaries and also showing by way of a note the amount included in salaries and wages in respect of persons who are officers and employees of the modaraba;

(iv) rent, municipal rates and provincial and local taxes (excluding the taxes on income capital gains and wealth);

(v) insurance;

(vi) repairs and maintenance (being repairs to and maintenance of the modaraba's fixed assets); and

(vii) patents, copyrights, trade marks, designs, royalties and technical assistance.

(D) The aggregate amount of auditor's remuneration, whether fees expenses or otherwise, for services rendered as auditors or in any other capacity, showing separately the remuneration for services rendered as auditors and the remuneration for services rendered in any other capacity and stating broadly the nature of such other services.

(E) Other expenses, showing separately every item of an exceptional or non-recurring nature and every material item.

(F) The amount provided for depreciation, renewal or diminution in value of fixed assets. The value of the assets by various groups, the additions or depletions thereto the rate at which depreciation is charged, shall be shown separately. Where such provision is not made by means of a charge for depreciation, the method adopted for making such provision shall be stated. If no provision for depreciation is made during the period the fact that no provision has been made and the reasons for not making it shall be stated and the amount which should have been provided and the quantum of arrears of depreciation, if any, shall be disclosed.

(G) (i) the amount of profit/loss on borrowing showing separately the amount on long-term loans (PLS) and on short-term loans (PLS) and showing by way of a note the amount of profit/loss on borrowing from the modaraba company, its directors and others;

- (ii) loss on sale of investments;
 - (iii) loss on sale of fixed assets;
 - (iv) debts written off as irrecoverable;
 - (v) provision for doubtful or bad debts;
 - (vi) provision for diminution in value of investments;
 - (vii) provision for taxation on income, capital gains and other tax or taxes; showing separately the provision for liability in respect of the profit of the period and the provision for liability deferred due to timing difference including the difference between the rates of depreciation allowed for purposes of taxation in income and those adopted by the company for the charge to profit and loss account, and distinguishing, where applicable, between the provision for Pakistan taxation and the provision for taxation elsewhere. Where the provision for taxation in respect of the profits of the period is reduced by the writing back of a part or the whole of the provision for deferred liability made in previous periods the amount written back shall be shown as deduction from the gross charge for taxation; and
 - (viii) other provisions for meeting specific liabilities, contingencies or commitments;
- (H) (i) the amount of profit payable to the PTC holders;
- (ii) the amount of profit payable to the modaraba company as their remuneration;
 - (iii) the amount set aside or proposed to be set aside as reserves, showing separately the respective amounts in respect of each item of reserves; and
 - (iv) the amount of proposed profit distribution to certificate-holders.

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

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

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

aggregate amounts, separately for officers and employees under appropriate heads such as:

- (a) fees;
 - (b) managerial remuneration;
 - (c) remuneration or commission based on net profit or turnover;
 - (d) reimbursable expenses;
 - (e) pensions; gratuities; modarabas contribution to provident superannuation and other staff funds, compensation for loss of office and in connection with retirement from office;
 - (f) buying commission;
 - (g) selling agency commission, showing separately the amount provided for or paid to an associated undertaking or to an associated person or to a director or officer of the modaraba company or the modaraba or any of their partners;
 - (h) other allowances, and commission, including commission for guarantee, specifying the nature of the allowances and commission and the respective amounts;
 - (i) other perquisites and benefits in cash or in kind stating their nature and, where practicable, their approximate money values;
 - (j) the amount of commission to an associated person of the modaraba company or, to an associated person of a partner or a director or officer of the modaraba company as selling or buying agents of other concerns in respect of contracts entered into by such concerns with the modaraba;
 - (k) the calculation of the remuneration or commission based on net profits or turnover payable to the officers and employees of modaraba or any other person with relevant particulars; and
 - (l) the amounts, if material, by which any items shown therein affected by any change in the basis of accounting. Auditor must state in his report as to whether he agrees with such change or not;
 - (m) any material respects in which any items shown in the profit and loss account are affected by transaction of a sort not usually undertaken by the modaraba or otherwise by circumstances of an exceptional or non-recurrent nature;
- (ii) in the case of a sale of an item of fixed assets otherwise than through a regular auction showing particulars of the original cost, accumulated depreciation charged thereon, the written down value, the sale price, the mode of disposal (e.g., by tender or negotiation); and the particulars of the purchaser, indicating whether such purchaser was a director or

officer or employee of the modaraba company or a certificate-holder owning 20 per cent. of the certificates of the modaraba;

- (iii) the aggregate amounts of the purchases from and sales of goods, materials and services to the modaraba company, an associated undertaking of the modaraba company or to an associated person of a director or officer of the modaraba company or of the modaraba or any of their partners. The nature of transaction with the associated undertaking should be clearly stated.

4. A modaraba need not show the amount set aside as provisions other than those relating to depreciation, renewal or diminution in value of assets, if, on application made by it, it has been allowed by the Registrar to do so on being satisfied that the disclosure of such information would be prejudicial to the amount of such provision as to indicate that it has been so allowed by the Registrar.

5. The profit and loss account shall be so drawn up as to disclose separately manufacturing trading and operational results. In the case of a manufacturing concern, the cost of goods manufactured shall also be shown. Where the modaraba has more than one unit of operation or line of business the working results of each such unit or line of business should be separately given.

6. Except in the case of the first profit and loss accounts the corresponding amounts for the immediately preceding financial year for all items shall be shown in the profit and loss account. In the case of modaraba preparing quarterly or half-yearly accounts, (*sic*) relate to the profit and loss account for the period which ended on the corresponding date of the immediately preceding year.

7. The information required to be given in respect of any of the items in profit and loss shall, if it cannot be included in the profit and loss account itself, be furnished in a separate schedule or note or schedules or notes to be attached and to form part of the profit and loss account.

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

PART III

INTERPRETATION OF SCHEDULE

1. For the purpose of this schedule unless the context otherwise requires--

- (a) the expression "associated undertakings" means any two or more undertakings interconnected with each other in the following manner, namely:--
- (i) if a person who is the owner or a partner, officer or director of an undertaking or who directly or indirectly holds or controls shares, carrying not less than twenty per cent of the voting power in such undertaking, is also the owner or a partner, officer or director of another undertaking or directly or indirectly holds or

controls shares carrying not less than twenty per cent of the voting power in that undertaking; or

- (ii) if the undertakings are under common management or common control or one is the subsidiary of another; and the shares of the issuer shall be deemed to be owned, held or controlled by a person if they are owned, held or controlled by that person or by the spouse, brother or sister or any lineal ascendant or descendant of that person and the person who is the owner or a partner, officer or director of, or directly or indirectly holds or controls shares carrying not less than twenty per cent of the voting power in an undertaking shall be deemed to be an "associated person" of the person who is the owner or a partner, officer or director of, or directly or indirectly holds or controls shares carrying not less than twenty per cent of the voting power in, another undertaking which is an associated undertaking of that undertaking:

Provided that the modaraba company and modaraba under its management shall be deemed to be an undertaking and common directors shall by virtue of their nomination or common shareholding or certificate holding by the financial institutions owned/or controlled by the Federal Government or Provincial Government will not constitute "associated undertaking" as defined in the aforesaid sub-rule;

- (b) the expression 'debts', shall include loans and advances and other receivables where it relates to amounts written off and provision for doubtful and bad debts;
- (c) the expression "liability" shall include all liabilities in respect of expenditure contracted for and all disputed or contingent liabilities;
- (d) the expression "manufacturing salaries and wages" shall mean those direct and administrative salaries and wages which under recognized accounting principles are so classified;
- (e) the expression "provision" shall, subject to paragraph 2 of this Part mean any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets, or retained by way of providing for any known liability of which the amount cannot be determined with substantial accuracy;
- (f) the expression "reserve" shall not, subject to aforesaid include any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability.

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

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

THE FOURTH SCHEDULE

[See rule 20(6)]

PROSPECTUS

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

Matters to be specified in prospectus and Reports to be set out therein.

PART I

MATTERS TO BE SPECIFIED

1. The name of Modaraba.
2. Principal place of business and branches, if any.
3. The name of the modaraba company and the address of its registered office.
4. The names, occupations, other directorships and addresses of the directors of the modaraba company.
5. Description of the business of modaraba company.
6. Type of Modaraba, *i.e.*
 - (a) Multipurpose modaraba or Specified purpose modaraba.
 - (b) Modaraba for a definite time or modaraba for an indefinite time.
7. Description of business to be undertaken by modaraba and its prospects.
8. (a) Amount of the modaraba;
 - (b) Divided into Modaraba Certificates of Rs. each to be issued at Rs. each.
 - (c) Details of calls to be made, if applicable.
9. Mode of distribution of profits.
10. The amount to be subscribed by the modaraba company, its directors and officers in their own name.
11. Name and address of the underwriters, if any, giving salient features of the agreement and the opinion of the Board of Directors of the Modaraba company that the resources of the underwriters are sufficient to discharge their obligations.
12. The form of Modaraba Certificate.

13. The names and addresses of the auditors of the modaraba and that of modaraba company.

14. Particulars as to--

- (a) the minimum amount which, in the opinion of the directors of the modaraba company must be raised by the issue of modaraba certificates in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance or the sums, required to be provided in respect of each of the following matters:
 - (i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;
 - (ii) any preliminary expenses payable by the modaraba and any commission so payable to any person in consideration of his agreeing to subscribe for or of his procuring or agreeing to procure subscriptions for, any certificate in the modaraba;
 - (iii) the repayment of any moneys borrowed by the modaraba company in respect of any of the foregoing matters;
 - (iv) working Capital; and
- (b) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

15. The date and time of the opening and closing of the subscription lists.

16. The amount payable on application and allotment on each certificate and, in the case of a second or subsequent offer of certificates, the amount offered for subscription on each previous allotment made within the two preceding years the amount actually allotted, and the amount, if any, paid on the certificates so allotted.

17. The number, description and amount of any certificate in the modaraba which any person has, or is entitled to be given, an option to subscribe for together with the following particulars of the option, that is to pay--

- (a) the period during which it is exercisable;
- (b) the price to be paid for certificates subscribed for under it;
- (c) the consideration (if any) given or to be given for it or for the right to it;
- (d) the names and addresses of the persons to whom it or the right to it was given.

18. The number and amount of certificate which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those certificates have been issued or are proposed or intended to be issued.

19. (1) As respects any property to which this paragraph applies--

- (a) the names and addresses of the vendors;
- (b) the amount payable in cash or certificates to the vendor and, where there is more than one separate vendor, or the modaraba is a sub-purchase, the amount so payable to each vendor;
- (c) short particulars of any transaction relating to the property completed within the two preceding years in which any vendor of the property to the modaraba or any person who is, or was at the time of the transaction, a promoter or a director or proposed director of the modaraba company had any interest direct or indirect.

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

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

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

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

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

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

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

25. Full particulars of the nature and extent of the interest, if any, of modaraba company and its directors and officers in the promoting or in the property proposed to be acquired by, the modaraba, or, where the interests of such a director or officer of the modaraba company consists in being partner in a

firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or certificates or otherwise by any person either for services rendered by him or by the firm in connection with the promotion or formation of the modaraba.

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

PART II

REPORT TO BE SET OUT

27. (1) A report by the auditors of the modaraba with respect to:-
- (a) profits and losses and assets and liabilities, in accordance with sub-paragraph (2) or (3) of this paragraph, as the case requires; and
 - (b) the rates of the distribution of profit including bonus certificates, if any paid by the modaraba in respect of each of the five financial years immediately preceding the issue of the prospectus, giving particulars of distribution of profits, and if no accounts have been made up in respect of any part of the period of five years ending on a date three months before the issue of the prospectus, containing a statement of that fact.
- (2) If the modaraba has no subsidiaries, the report shall--
- (a) so far as regards profits and losses, deal with the profits or losses of the modaraba in respect of each of the five financial years immediately preceding the issue of the prospectus; and
 - (b) so far as regards assets and liabilities, deal with the assets and liabilities of the modaraba at the last date to which the accounts of the modaraba were made up.
- (3) If the modaraba has subsidiaries, the report shall--
- (a) so far as regards profits and losses, deal separately with the modaraba's profits or losses as provided by the last foregoing sub-paragraph, and in addition, deal either--
 - (i) as a whole with the combined profits or losses of each subsidiary, so far as they concern certificate holders of modaraba; or
 - (ii) individually with the profits or losses of each subsidiary, so far as they concern certificate-holders of the modaraba or, instead of dealing separately with the modaraba's profits or losses, deal as a whole with the profits or losses of the modaraba and, so far as they concern certificate-holders of the modaraba with the combined profits;

- (b) so far as regards asset and liabilities, deal separately with the modaraba's assets and liabilities as provided by the last foregoing sub-paragraph and, in addition, deal either--
- (i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the modaraba's assets and liabilities; or
 - (ii) individually with the assets and liabilities of each subsidiary, and shall indicate as respects of the assets and liabilities of the subsidiaries the allowance to be made for persons other than certificate-holders of the modaraba.

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

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

29. (1) If--

- (a) the proceeds, or any part of the proceeds, of the issue of the certificates are or is to be applied directly or indirectly in any manner resulting in the acquisition by the modaraba of shares or modaraba certificates in any other body corporate;
- (b) by reason of that acquisition or anything to be done in consequence thereof or in connection therewith that body corporate will become a subsidiary of the modaraba;

a report made by auditors (who shall be named in the prospectus) upon--

- (i) the profits or losses of the other body corporate in respect of each of the five financial years immediately preceding the issue of the prospectus; and
- (ii) the assets and liabilities of the other body corporate at the last date of which the accounts of the body corporate were made up.

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

PART III**PROVISIONS APPLYING TO PARTS I AND II OF SCHEDULE**

30. Paragraphs 22 (so far as it relates to preliminary expenses) and 15 of this Schedule shall not apply in the case of a prospectus issued more than two years after the date at which the modaraba was floated.

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

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

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

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

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

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

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

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

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

ECONOMIC REFORMS ORDER, 1972

PRESIDENT'S ORDERS I OF 1972

[*Gazette of Pakistan, Extraordinary, 3rd January, 1972*]

No. F.24(I)/72-Pub. The following Order made by the President on the 1st January, 1972, is hereby published for general information:--

Whereas the benefits of economic development and industrialization have remained confined to the privileged few to the detriment of the common man;

And whereas Islam enjoins equitable distribution of wealth and economic power and abhors their concentration in a few hands;

And whereas it is the duty of Government to ensure that the wealth and economic resources of the country are exploited to the maximum advantage of the common man;

And whereas those who control the means of production are accountable to the people through their chosen representatives;

And whereas it is necessary to safeguard the interests of the small investor;

And whereas it is necessary for that purpose to provide for redeeming the promises made to the people in that behalf from time to time since the creation of Pakistan;

Now, therefore, in pursuance of the Proclamation of the 25th day of March, 1969, read with the Proclamation of the 20th day of December, 1971, and the Provisional Constitution Order, and in exercise of all powers enabling him in that behalf, the President and Chief Martial Law Administrator is pleased to make the following Order:

1. *Short title, extent and commencement.* (1) This Order may be called the Economic Reforms Order, 1972.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. *Definitions.* In this Order, unless there is anything repugnant to the subject or context,--

- (a) "establishment" means ¹[company, firm, concern, institution or enterprise the whole or any part of the undertaking of which pertains] to any of the categories set out in the ²[First Schedule] and includes any related office, shop, factory, godown, yard stocks and stores wherever they may be:
- (aa) ³["managed establishment" means an establishment in respect of which a Managing Director has been appointed;]
- (b) "Managing Director" in relation to an establishment means a Managing Director appointed under Article 4 in respect of such establishment; and
- (bb) ³["Share-holder" means a share-holder in the share capital of an establishment, and includes a stock-holder;
- (bbb) "person" includes an individual, a Hindu undivided family, a partnership firm, an association of persons or a body of individuals, the Government of a Province and a local authority;]
- (c) words and expression used but not defined in this Order shall have the same meaning as in the Companies Act, 1913 (VII of 1913).

3. *Order to override other laws.* This Order shall have effect notwithstanding anything contained in the Provisional Constitution Order or any other law for the time being in force or in any agreement, contract, memorandum or articles.

⁴[(2) It is hereby declared that development under Federal control of the industries pertaining to any of the categories set out in the First Schedule is expedient in the public interest].

1. **Constitutional jurisdiction.** Although certain categories of contractual obligations can be enforced in Constitutional jurisdiction, provided always that responding party was subject to that jurisdiction, yet it had never been the practice of superior Courts to interfere in contractual disputes, where controversy involved minute details or when controverted and complicated facts, not easy of resolution, were presented for adjudication. Therefore, constitutional jurisdiction, which

1. Subs. by Act. 64 of 1973, S. 3.

2. Subs. by Act. 64 of 1973, S. 3.

3. Added by Act. 64 of 1973, S. 3.

4. Section 3 renumbered as sub-section (1) and sub-section (2) added by Act 64 of 1973, S. 4.

substantially is discretionary in nature cannot plausibly be invoked in controversial and complicated matters.⁵

4. *Power to appoint Managing Director.* (1) The '[Federal Government] may, if it considers necessary in the public interest so to do, by order appoint a Managing Director in respect of an establishment, '[* * * *].

(2) On the appointment of a Managing Director in respect of an establishment, the administration of the affairs of that establishment shall vest in him and any person or authority exercising or having the right to exercise immediately before such appointment, any power or function in relation to the '[* * * *] establishment shall cease to exercise or to have the right to exercise such power or function, '[and, on and from such date as the Federal Government may by notification in the official Gazette, specify, the establishment shall be known by such new name as may be so specified].

(3) The Managing Director shall hold office during the pleasure of the '[Federal Government], and shall, in the discharge of his functions, be subject to such orders and directions as the '[Federal Government] may from time to time give in writing.

(4) Where a Managing Director is appointed in respect of an establishment, the '[Federal Government] may, by order, remove from office the Board of Directors, the Managing Agent, any Director or any other ¹⁰[person] howsoever designated performing or having the right to perform any function in relation to that establishment:

Provided that the Managing Director may require any Director or other officer in respect of whom an order is made under this clause, to perform any function in relation to the establishment as the Managing Director may direct on such terms and conditions as may appear reasonable.

(5) The Managing Director appointed under clause (1) in respect of an establishment shall exercise--

5. 1990 CLC 2007.

6. Subs. by Act 64 of 1973, S. 2.

7. Omitted by Act 64 of 1973, S. 5.

8. Added by Act. 25 of 1973, S. 8.

9. Subs. by At. 64 of 1973, S. 2.

10. Subs. by Act 64 of 1973, S. 5.

- (a) if such establishment is owned or controlled by a company, all the powers and functions of the Board of Directors;
- (b) if such establishment is owned or controlled by an individual or a firm, all the powers and functions of that individual or a firm; and
- (c) if such establishment had a Managing Agent to manage its affairs, all the powers and functions of the Board of Directors.

1. **Power to remove from service.** Federal Government has reserved the power to remove from office, Board of Directors, Managing Agent, any Director or any other person, howsoever designated, performing or having the right to perform any function in relation to an establishment as defined in the Economic Reforms Order, 1972.¹¹

Where Managing Director had not delegated powers to terminate services of employee. Services terminated by Head of Department countersigning of order by Managing Director did not legalise the termination. Employee was reinstated with full emoluments.¹²

5. **No compensation for termination of office.** No compensation shall be payable for the termination of any office or of an agreement under or by virtue of the operation of the provisions of this Order:

Provided that this Article shall not be construed as preventing the [Federal Government] from authorising any payment to reimburse a person for any expenses *bona fide* incurred by him in connection with the management of the establishment before the appointment of a Managing Director.

6. **Employees to continue in service.** Unless in any particular case the Managing Director otherwise directs, all persons employed in, by or for the purpose of the business of the establishment by whomsoever appointed or engaged, shall continue in their respective employments on the same remuneration and other conditions of service as were applicable to them immediately before the appointment of the Managing Director of that establishment.

1. **Terms and conditions of employment.** Normally the employees will continue in their respective employments on the same terms and conditions as

11. 1990 CLC 479 = NLR 1992 Ser. 4(DB).

12. NLR 1978 Lah. 334 (NIRC).

13. PLJ 1977 Tr.C. 3.

14. Subs. by Act. 64 of 1973. S. 2.

before, unless the Managing Director in any particular case otherwise directs. In other words the employees would be governed by the W.P. Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, unless the Managing Director otherwise directs.¹⁵

7. *Prohibition to obstruct.* No person shall, except under the authority of the ¹⁴[Federal Government], give any instructions to the Managing Director, nor shall any person in any manner obstruct him in the discharge of his functions.

¹⁵[7-A. *Power to prohibit dealings in shares, etc.* (1) The Federal Government may, by notification in the official Gazette, direct that--

- (a) no dealings or business relating to the shares of the managed establishment specified in the notification shall be transacted on any stock exchange; and
- (b) no transfer of the shares of the managed establishment specified in the notification shall be registered in the share register of the establishment except to the extent and in the manner so specified.

(2) A notification issued under paragraph (a) of clause (i) shall remain in force for a period of ninety days unless it is earlier rescinded or modified.

7-B. *Power to acquire shares or business of an establishment.* (1) The Federal Government may, if it considers necessary in the public interest so to do, by an order,--

- (a) In the case of an establishment which is a company or an establishment owned by a company:
 - (i) acquire the entire shares held in the company by the sponsors and directors of the previous management thereof, the family members of such sponsors and directors and the associated undertakings and managing agents which were the associated undertakings and managing agents of the company at the time at which a Managing Director was appointed in respect thereof and the whole or a portion of the shares from all or any of the share-holders of such company and, as from the date of such order, the shares so acquired shall vest in the Federal Government; or

15. Section 7-A to 7-E, Subs. by Act 64 of 1973, S. 6.

- (ii) acquire the whole or a portion of the proprietary interests of such company in such establishment and, as from the date of such order, the interests so acquired shall vest in the Federal Government; and
- (b) in the case of an establishment owned by a person acquire the whole or a portion of the proprietary interests of such person and, as from the date of such order, the interests so acquired vest in the Federal Government:

Provided that no order shall be made under this Article for the acquisition of the shares held in an establishment by a foreign investor or an institution owned, managed or controlled by the Federal Government:

Provided further that in the case of an establishment which is a company or an establishment owned by a company, the Federal Government may, by notification in the official Gazette, exempt from acquisition shareholdings of any share-holder up to such maximum amount as may be specified in the notification.

Explanation.--In this clause,--

- (a) "associated undertakings" has the same meaning as in the Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970 (V of 1970);
- (b) "family members" in relation to a sponsor or director, means the spouse, lineal ascendants and descendants and brothers and sisters of the sponsor or director; and
- (c) "previous management", in relation to a company, means a person, body or managing agency in whom the management of the company vested immediately before the appointment of a Managing Director in respect of such company or of the establishment owned by it.

(2) Where the Federal Government makes an order under clause (1) in respect of the shares of any company, no dealings or business relating to such shares shall be transacted on any stock exchange for a period of ninety days from the **date of such order**.

Synopsis

1. Compensation payable for shares.
2. Constitutional petition.

1. **Compensation payable for shares.** In case of acquisition of shares by Government, compensation to be payable is to be determined on basis of

principles set out in Second Schedule viz., (a) in case of shares not quoted on any of the Stock Exchanges, at the break-up value; and (b) in the case of shares, quoted on any of the Stock Exchanges, at the market value.¹⁶

Break-up value of compensation for shares, determination of. Working out the break-up value of shares at specified rate per share without hearing shareholders of establishment was without lawful authority and of no legal effect. Authority was directed to appoint a reputable firm of Chartered Accountants for working out break-up value of shares on the basis of financial year ending on 30.6.1973, when shares were acquired by Government, after hearing both the parties. Shareholders would be entitled to payment of compensation in terms of para 3 of Second Schedule of Order 1 of 1972 after necessary adjustments.¹⁷

2. *Constitutional petition.* Constitutional petition is not suitable for grant of prayer involving calculation or assessment of amount. Such prayer could be more appropriately the subject-matter of a suit. Where, however, no calculation or assessment of amount was involved and the only question which required determination was the basis on which a person was entitled to receive compensation or any other amount in terms of relevant law, High Court, in exercise of Constitutional jurisdiction, could direct that the petitioner be paid on the basis provided under the relevant law without specifying the amount which was a matter of calculation. In this context it may be noted that for filing constitutional petition date of acquisition of shares is not material. Date on which petitioners were finally told that they were entitled to receive compensation on basis of break-up value of shares was material. Constitutional petition filed within two weeks of such receipt of information did not suffer from laches. *Simpliciter laches*, however, was no ground for non-suiting a petitioner if equities were not against him.¹⁸

7-C. *Acquisition of shares.* Where, under Article 7-B, the Federal Government acquires the whole or a portion of the shares of the shareholders of any company or of the proprietary interest of a company or other person in an establishment, the Federal Government shall, ¹⁹[* * *] pay such compensation as may be determined by it on the basis of the principles set out in the Second Schedule.

7-D. *Re-organization of establishment.* (1) Where, in respect of any managed establishment which is a company or an establishment owned by a company, the Federal Government holds or has acquired the whole or a majority portion of the shares in the company carrying the controlling voting rights, or where the Federal Government has acquired the whole or a controlling portion of the proprietary interests it may at any time reorganize

16. PLD 1989 Kar. 471 = NLR 1990 Civ. 50 (DB).

17. PLD 1989 Kar. 471 = NLR 1990 Civ. 50 (DB).

18. PLD 1989 Kar. 471 = NLR 1990 Civ. 50 (DB).

19. Words 'ninety days' omitted by Act, 26 of 1974.

such establishment with a view to increasing its efficiency and rationalising its operation.

(2) The re-organization may include provision for amalgamation of a managed establishment with **other** such establishment or within undertakings owned or managed by the Federal Government or by a corporation set up under the authority of the Government and, in the case of establishments which are companies or establishments owned by companies, may provide for the reconstruction of any such company or companies, or amalgamation of any such two or more companies and for all or any of the matters contained in section 153 or section 153-B of the Companies Act, 1913 (VII of 1913), or for alteration of share capital or loan structure and alteration of existing, or adoption of fresh, articles of association of such companies.

(3) The re-organisation shall be implemented and take effect in such manner and at such time as the Federal Government may, by notification in the official Gazette, specify.

Explanation. For the purposes to this Article ²⁰[Article 7-E and Article F] the Federal Government shall be deemed to have a majority portion of the shares in a company carrying controlling voting rights or the controlling proprietary interests in an establishment if the aggregate face value of the shares or proprietary interests in such establishment owned by the Federal Government and by an institution owned or controlled by the Federal Government exceeds 50% of the total voting rights in the issued and paid-up share capital of the company or 50% of the proprietary interests of that establishment.

1. **Change of management--effect.** Where Federal Government has not taken over the assets and liabilities of the State managed companies, mere change of management under the Economic Reforms legislation does not alter the position. The new management continues to remain liable for the claim, if any, found by a competent authority.

7-E. *Vesting of management, etc., acquired by Federal Government in a corporation.* (1) Where the Federal Government acquires the whole or a majority portion of the shares or proprietary interests of a company or other person under Article 7-B, the Federal Government may transfer the management of, and such shares or proprietary interests in such establishment to

20. Subs. by Ord., 44 of 1978, S. 52.

1. PLD 1973 Lah 92 (DB).

any corporation wholly owned or controlled by the Federal Government or a corporation to be set up for the purpose.

(2) A corporation to which the management of, or shares or proprietary interest in, an establishment is or are transferred under clause (1) shall, in the exercise of its powers and performance of its functions, be subject to the general supervision and control of such Board or other authority the Federal Government may set up for the purpose.]

²[7-F. *Constitution of Board of Directors, etc.* (1) Where the Federal Government has acquired under Article 7-B the whole or a majority portion of the shares of a managed establishment which is a company and is of the opinion that, in the interest of the shareholders of the managed establishment, it is necessary to do so, the Federal Government may, by order in writing direct that a board of directors consisting of a Managing Director and such number of other directors as may be specified in the order be constituted in such managed establishment.

(2) Where the Federal Government has made an order under clause (1) in respect of a managed establishment, the board of directors of such establishment shall be constituted within a period of sixty days from the date of the order.

(3) Where the Federal Government has made an order under clause (1) in respect of a managed establishment,--

(a) The Federal Government may nominate such number of directors including the Managing Director, on the board of directors of the managed establishment as bears to the total number of directors, as nearly as may be, the same proportion as the aggregate face value of the shares owned by the Federal Government and by an institution owned or controlled by Federal Government, including the Corporation to which the management of the managed establishment stands transferred under clause (1) of Article 7-E, hereafter in this Article referred to as the Corporation, bears to the total issued share capital of the managed establishment; and

(b) the other directors shall from time to time be elected by the members of the managed establishment, other than the Federal Government an institution referred to in

paragraph (a) and the Corporation, in general meeting in accordance with the Companies (Managing Agency and Election of Directors) Order, 1972 (P.O. No. 2 of 1972).

(4) The Managing Director nominated under clause (3) shall be the chief executive of the managed establishment.

(5) The board of directors of a managed establishment constituted under this Article shall enter upon office on such date as the Federal Government may, by order in writing, appoint in this behalf and, upon their entering upon office as aforesaid,—

- (a) the Managing Director appointed under clause (1) of Article 4 in respect of the establishment shall cease to hold office;
- (b) the management of the establishment shall cease to vest in the Corporation, and the management and administration of the affairs of the establishment shall, subject to this Article, stand transferred to the board of directors; and
- (c) the Managing Director nominated under clause (3) shall have such powers and functions as the board of directors may, from time to time, confer upon or entrust to him.]

1. *Termination of service of employees.* Board of Directors of the establishment alone is competent to order termination of service of an employee. Order of termination not passed by or under the orders of the Board of Directors but passed by Chairman of the establishment was not valid. Even if Chairman of the establishment was deemed to be authorized to pass order of termination, still he having not applied his independent mind or judgment, but having done so at the intervention of the Minister concerned, same was invalid, and not maintainable and being in violation of Art. 7-F, Economic Reforms Order, 1972, was liable to be struck down.³

Constitutional petition against order. Where establishment in question was owned, managed and controlled by Federal Government, officials of the establishment were also appointed by the Federal Government and for discharging their functions were subject to the orders and directions of the Federal Government. Officials of the establishment concerned were performing functions with the affairs of the Federation of Pakistan and as such were amenable to the jurisdiction of High Court under Art. 199 of the Constitution. Establishment in question, being a Corporation was included in the definition of "Person" in Art. 199 of the Constitution. Strict compliance with the provisions of

3. PLD 1994 Lah 417 = PLJ 1994 Lah. 349.

law and principles of natural justice being the legal obligation of officials of establishment, same were liable to be judicially reviewed by the High Court in exercise of its Constitutional jurisdiction.⁴

8. *Bar of jurisdiction.* (1) No Court, including the Supreme Court and a High Court shall call in question, or permit to be called in question, any provision of this Order or of any rule or order made or anything done or any action taken or purporting to be made, done or taken thereunder.

(2) No Court, including the Supreme Court and a High Court, shall grant any injunction or make any order, nor any such Court shall entertain any proceedings in relation to anything done or intended or purporting to be done under this Order.

9. *Indemnity.* No suit, prosecution or other legal proceedings shall lie against the ⁵[Federal Government] or the Managing Director or any other person for anything in good faith done under this Order or any rule or order made thereunder ⁶[or for any inadvertent failure to comply with any of the provisions of the Companies Act, 1913 (VII of 1913)].

1. *Scope.* Legality of break-up value of compensation for shares acquired under Art. 7-B is not open to challenge.

10. *Delegation of powers.* The ⁵[Federal Government] may, by notification in the official Gazette, direct that any of its powers under this Order shall, subject to such conditions, if any, as may be specified in the notification, be exercisable also by a Provincial Government.

11. *Savings.* Nothing contained in this Order shall affect any agreement entered into between ⁸[Federal Government] and a foreign investor or creditor or any agreement between a foreign investor or creditor and any citizen of Pakistan which has been expressly approved by the ⁸[Federal Government].

12. *Power to make rules.* (1) ⁸[Federal Government] may, by notification in the official Gazette, make such rules as appear to it to be necessary or expedient for carrying out the purposes of this Order.

4. PLD 1994 Lah 417=PLJ 1994 Lah. 349. (See also: NLR 1992 Service 4=1990 CLC 479 (DB)).

5. Subs. by Act. 64 of 1972. S. 2.

6. Added by Act. 64 of 1973. S. 7.

7. NLR 1990 Civ. 50=PLD 1989 Kar. 471 (DB).

8. Subs. by Act. 64 of 1973. S. 2.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for, or may empower any authority to make orders providing for, all or any of the following matters, namely:--

- (a) ensuring the safety of the properties of an establishment;
- (b) ensuring the due performance of their duties by the persons connected with an establishment;
- (c) prohibiting anything likely to interfere with the proper functioning of an establishment;
- (d) the administration, management and disposal by way of transfer or otherwise of any property belonging to or held or managed by or on behalf of an establishment;
- (e) prohibiting the departure from any area of any person connected with the administration, control or functioning of an establishment;
- (f) the taking over or control of any business, trade, industry, firm or company which is in the opinion of the ⁹[Federal Government] a subsidiary of an establishment;
- (g) the requisitioning of any property, movable or immovable, belonging to an establishment;
- (h) the requisitioning of any property, movable or immovable, the requisition of which is, in the opinion of the ⁸[Federal Government], required for the proper functioning of the Government;
- (i) preventing the entry of any person into any place, yard, factory, mill, shop or office used for the purpose of an establishment or of any of its subsidiaries; ⁹* * * *
- (j) the taking of any steps for collecting, controlling and disposing of the assets, movable and immovable of any establishment ¹⁰[; and]
- ¹¹[(k) the procedure and manner of acquiring shares and proprietary interests in establishment and payment of compensation therefor and re-organization of managed establishments; and

9. Omitted by Act. 64 of 1973, S. 8.

10. Subs. by Act. 64 of 1973, S. 8.

11. Added by Act. 64 of 1973, S. 8.

(1) in the case of an establishment which is a company, the calling of meeting of the share-holders of the company and the conduct of its affairs].

(3) The rules made under this Article may provide that the contravention of any of the provisions or the Order of the rules shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ten lakhs of rupees, or with both.

13. *Removal of difficulties.* If any difficulty arises in giving effect to any provision of this Order, the ¹²[Federal Government] may make such order, not inconsistent with the provisions of this Order, as may appear to it to be necessary for the purpose of removing the difficulty:

Provided that no such power shall be exercised after the expiry of one year from the commencement of this Order.

¹³[THE FIRST SCHEDULE]

1. Iron and Steel Industries.
2. Basic Metal Industries.
3. Heavy Engineering Industries.
4. Heavy Electrical Industries.
5. Assembly and Manufacture of Motor Vehicles.
6. Tractor Plants, Assembly and Manufacture.
7. Heavy and Basic Chemicals.
8. Petro-chemical Industries.
9. Cement Industry.
10. Public utilities, that is to say--
 - (a) Electricity, Generation, Transmission and Distribution;
 - (b) Gas; and
 - (c) Oil Refineries.

12. Subs. by Act. 64 of 1973. S. 2.

13. Subs. by Act. 64 of 1973. S. 9.

" [SECOND SCHEDULE

Principles and the manner for payment of compensation in respect of the shares or proprietary interest of an establishment acquired by the Federal Government.

1. Where the whole or a portion of the shares of such an establishment is acquired by the Federal Government, the value of the compensation for the shares so acquired shall be assessed--

- (a) in the case of shares not quoted on any of the stock exchanges, as the Break Up value; and
- (b) in the case of shares quoted on any of the stock exchanges, as the Break Up Value or the Market Value, whichever is less.

2. Where the whole or a portion of the proprietary interests in such an establishment is acquired by the Federal Government, the value of the compensation for the interests so acquired shall be assessed--

- (a) in the case of an establishment which has been in commercial production for less than 5 years, at the Net Worth Value of the proprietary interests of such establishment; and
- (b) in the case of an establishment which has been in commercial production for more than 5 years, at the Net Worth Value or the Times Value of the proprietary interests, whichever is less, of such an establishment.

3. The compensation payable in accordance with the principles indicated above shall be paid by the Federal Government in cash or in the form of Government Industrial Bonds redeemable at any time at the option of the Federal Government carrying a rate of interest one per cent, above the bank rate as notified by the State Bank of Pakistan from time to time. The bonds shall not be transferable or be eligible for hypothecation except in accordance with such rules as may be made by the Federal Government in this behalf.

1. **Party must be heard.** In all proceedings by whomsoever whether judicial or administrative, principles of natural justice have to be complied with if such proceedings could result in consequences affecting person or property or where other rights of parties were affected. Therefore while determining break-up value

of shares of establishment by Government, shareholders were not given opportunity to express their view and factum that shareholders had made representations subsequent to the working out of break-up value, did not fulfil requirement of the principles of natural justice. The order was set aside.¹⁵

4. Definitions. In this Schedule,--

- (a) "Break Up Value" shall mean the value of the shares of a company as determined by the auditors of such company on the basis of its latest audited Annual Balance Sheet, in accordance with clause (c) of rule 8 of the Wealth Tax Rules;
- (b) "Market Value" shall mean the average value of the shares of a company as quoted on the stock exchange nearest to the Head Office of that company on closing on the six working days prior to the date of acquisition of such shares under the Order or, if, on the date of such order, dealings or business relating to such shares is prohibited under the Order, the six days prior to the date on which the dealings or business is so prohibited;
- (c) "Net Worth Value" shall mean the value of the proprietary interests of a company or other person in an establishment, which is acquired under the Order, as determined by the auditors appointed by the Federal Government on the basis of the latest annual audited Balance Sheet or, where no audited Balance Sheet is available, on the basis of the latest annual Balance Sheet of such establishment to be verified by the auditors appointed by the Federal Government for the purpose. The Net Worth Value shall be determined by valuing the Fixed Tangible Assets appearing in the Balance Sheet at their written down values, and valuing the Current Assets, e.g. stocks, inventory, work in progress, advances and pre-payments, cash and bank balances, at their cost or market value, whichever is lower. From the sum total of the fixed and the current assets so valued as aforesaid, all the outstanding liabilities appearing in the Balance Sheet shall be deducted, thereby arriving at the Net Worth Value of the proprietary interests in such establishment;
- (d) "Time Value" shall mean the value of the proprietary interests of a company or other person in an

15. PLD 1989 Kar. 471 = NLR 1990 Civ. 50 (DB).

establishment, where such establishment has been in commercial production for a period of not less than 5 years and shall be determined by multiplying the average net profits of the last 3 completed years on account of such an establishment by the figure 7; and

- (e) "Net Profits" shall mean the net profits as defined in subsection (3) of section 87-C of the Companies Act, 1913 (VII of 1913)].

ECONOMIC REFORMS (ACQUISITION AND COMPENSATION) RULES, 1973

[Gazette of Pakistan, Extraordinary, Part II, 24th October, 1973]

S.R.O. 1516(I)/73. In exercise of the powers conferred by Article 12 of the Economic Reforms Order, 1972 (P.O. 1 of 1972), the Federal Government is pleased to make the following rules, namely:-

1. **Short title and commencement.** (1) These rules may be called the Economic Reforms (Acquisition and Compensation) Rules, 1973.

(2) They shall come into force at once.

2. **Definitions.** In these rules, unless there is anything repugnant in the subject or context,--

(a) 'Article' means Article of the Order;

(b) 'Board' means the Board of Industrial Management established under the Development of Industries (Federal Control) Act, 1972 (XVI of 1972); and

(c) 'Order' means the Economic Reforms Order, 1972 (P.O. No. 1 of 1972).

3. **Preparation of list of share-holders.** (1) The Managing Director of an establishment shall, after giving effect to changes, if any, permitted in pursuance of a notification under Article 7-A prepare and submit to the Federal Government a list of share-holders indicating the shares held by such share-holders and such list shall form the basis for determining the extent of acquisition of shares.

(2) Where shares held by a share-holder are registered under more than one folio in the registers of a company, all such shares will be consolidated to determined holdings of a share-holder.

4. **Order of acquisition.** The order of acquisition of shares of an establishment passed by the Federal Government shall be communicated to the Managing Director who shall inform the share-holders, whose shares stand acquired, either partly or wholly, by registered post acknowledgment due at the address given in the share register and he shall also furnish a copy of such order, if the shares of such establishment are quoted on a stock exchange, to the recognised stock exchanges.

5. **Procedure on acquisition.** (1) Where orders for acquisition of shares of an establishment are passed by the Federal Government, the Managing Director shall make arrangements to issue new share certificates, which will be different in design and distinguishable from the existing share certificates of the establishment, and to exchange the existing certificates with the new ones or with the certificates of entitlement for compensation for acquired shares, as the case may be.

(2) For the purpose of issuing new share certificates and certificates of entitlement for compensation, the Managing Director shall issue a public notice

giving a date, which shall not be less than ten days from the date of publication of such notice, by which date the shares should be lodged with the establishment.

(3) Where only a portion of shares of a share-holder whose shares have been acquired has been lodged with the company under sub-rule (2), the shares shall stand acquired in the order in which they were lodged with the company till the number of shares ordered to be acquired have been so acquired.

(4) Where the shares to be acquired are not lodged with the company, or where the number of shares lodged is less than the number to be acquired, the Managing Director shall, subject to such directions as the Federal Government may give, determine as to which of the shares should be acquired.

(5) A list of shares acquired shall be furnished by the Managing Director to the recognised stock exchanges.

(6) Where a share is liable to acquisition, no exemption from such acquisition may be claimed on the ground that it is held or owned by another person:

Provided that where a share is lodged with the company before the date fixed under sub-rule (2) accompanied by a valid transfer deed, the Managing Director shall endorse the certificate of entitlement for compensation in the name of transferee and the compensation shall in such case be payable to such transferee.

(7) The certificates of entitlement for compensation and the new share certificates shall be issued only in exchange for the existing share certificates, and where such share certificates are reported to have been lost or destroyed, the new certificates will be issued after fulfilling the same formalities as are required in the case of issue of duplicate share certificate.

(8) The shares acquired under the Order shall be registered in the name of the Federal Government and the Managing Director shall prepare share certificates in respect of such shares and deliver them to such agency as the Federal Government may direct.

(9) All share certificates issued before acquisition in respect of the acquired shares shall cease to be valid deeds of ownership of shares and, except for exchange for certificates of entitlement for compensation, shall not be traded or hypothecated.

6. Register of acquired shares. The Managing Director shall maintain a separate register of acquired shares and of the certificates of entitlement for compensation, and shall furnish lists thereof to the Federal Government.

7. Payment of compensation. On presentation of the certificate of entitlement for compensation through a recognised bank, the Federal Government shall cause payment of compensation to be made either in cash or in the form of bond or partly in cash and partly in the form of bonds, as it may decide.

8. Transferability and eligibility of bonds for hypothecation. The bonds issued on acquisition of shares shall be transferable and eligible for hypothecation.

9. **Offences and penalties.** Whoever in pursuance of the Order or any rule of notification made or issued thereunder, makes a declaration or furnish information which he knows or has reason to believe to be false or gives a false certificate or fabricates documents or books of account to fraudulently get shares transferred shall be punishable with imprisonment which may extend to two years, or with fine which may extend to one lac rupees, or with both.

FOREIGN PRIVATE INVESTMENT (PROMOTION AND PROTECTION) ACT, 1976

ACT XLII OF 1976

An Act to provide for the promotion and protection of foreign private investment in Pakistan

[*Gazette of Pakistan, Extraordinary, Part I, 15th June, 1976*]

The following Act of Parliament received the assent of the President on 4th June, 1976 and is hereby published for general information:--

Whereas, it is expedient to provide for the promotion and protection of foreign private investment in Pakistan and for matters ancillary thereto.

It is hereby enacted as follows:-

1. **Short title, commencement and application.** (1) This Act may be called the Foreign Private Investment (Promotion) and Protection) Act, 1976.

(2) It shall come into force at once.

(3) It shall apply to all industrial undertakings in Pakistan having foreign private investment established with the approval of the Federal Government after the first day of September, 1954:

Provided that nothing in this Act shall be in derogation of any facilities or protection specifically sanctioned by the Federal Government to foreign private investment in the case of a particular industrial undertaking or a class of industrial undertaking or such facilities or protection as may be available to foreign private investment under a bilateral investment treaty.

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

(a) "foreign capital" means investment made by a foreigner in an industrial undertaking in Pakistan--

(i) in the form of foreign exchange, imported machinery and equipment, or

(ii) in any other form which the Federal Government may approve for the purpose;

(b) "foreign private investment" means investment in foreign capital by a person who is not a citizen of Pakistan or by a company incorporated outside Pakistan, but does not include investment by a foreign Government or agency of foreign Government;

(c) "industrial undertaking" means an industry, undertaking or establishment engaged in the production, distribution or processing of any goods, the providing of services specified in this behalf by the Federal Government

or the development and extraction of such mineral resources and products as may be specified in this behalf by the Federal Government.

(2) Words and expressions used but not defined in this Act shall have the same meanings as in the Companies Act, 1913 (VII of 1913).

3. Field for foreign private investment. The Federal Government may consistent with the national interest, for the promotion of foreign private investment, authorise such investment in any industrial undertaking--

- (a) which does not exist in Pakistan and the establishment whereof, in the opinion of the Federal Government, is desirable; or
- (b) which is not being carried on in Pakistan on a scale adequate to the economic and social needs of the country; or
- (c) which will contribute to--
 - (i) the development of capital, technical and managerial resources of Pakistan;
 - (ii) the discovery, mobilisation or better utilization of the national resources;
 - (iii) increasing employment opportunities in Pakistan; or
 - (iv) the economic development of the country in any other manner.

4. Approval of foreign private investment. Where the Federal Government sanctions an industrial undertaking having foreign private investment, it may do so subject to such conditions as it may specify in this behalf.

5. Protection of agreements. (1) Where the Federal Government considers it necessary in the public interest to take over the management of an industrial undertaking having foreign private investment or to acquire the ownership of the shares of citizens of Pakistan in the capital of such industrial undertaking, any agreement approved by the Federal Government relating to such undertakings entered into between a foreign investor or creditor and any person in Pakistan shall not be affected by such taking over or acquisition.

(2) Foreign capital or foreign private investment in an industrial undertaking shall not be acquired except under due process of law which provides for adequate compensation therefor to be settled in the currency of the country of origin of the capital or investment and specifies the principles on and the manner in which compensation is to be determined and given.

6. Repatriation facilities. Subject to the provisions of the Foreign Exchange Regulation Act, 1947 (VII of 1947),--

- (a) a foreign investor in an industrial undertaking established after the 1st day of September, 1954, and approved by the Federal Government, may at any time repatriate in the currency of the country from which the investment originated--
 - (i) foreign private investment to the extent of original investment;

- (ii) profits earned on such investment; and
 - (iii) any additional amount resulting from the re-invested profits or appreciation of capital investment; and
- (b) a creditor of an industrial undertaking referred to in clause (a) may repatriate foreign currency loans approved by the Federal Government and interest thereon in accordance with the terms and conditions of the said loan:

Provided that nothing in this section shall effect the terms of the permission to make such investment granted to a foreign investor before the commencement of this Act.

7. Remittances by foreign employees. Foreign nationals employed with the approval of the Federal Government in any industrial undertaking having foreign private investment may make remittances for the maintenance of their dependents in accordance with the rules, regulations or orders issued by the Federal Government or the State Bank of Pakistan.

8. Tax concession and avoidance of double taxation. (1) The Federal Government may allow such concessions to industrial undertakings having foreign private investment as may be admissible under any law for the time being in force.

(2) Foreign private investment shall not be subject to other or more burdensome taxes on income than those applicable to investment made in similar circumstances by citizens of Pakistan.

(3) Foreign private investment shall be allowed all the tax concessions as may be admissible on the basis of any agreement for avoidance of double taxation which the Government of Pakistan may have entered into with the Government of the country of origin of such investment.

9. Equal treatment. Industrial undertakings having foreign private investment shall be accorded the same treatment as is accorded to similar industrial undertakings having no such investment in the application of laws, rules and regulations relating to importation and exportation of goods.

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

Provided that no such power shall be exercised after the expiry of one year from the commencement of this Act.

11. Power to make rules. The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act and such rules may, among other matter, provide for the employment of Pakistani and foreign nationals in industrial undertakings having foreign private investment.

12. Repeal. The Foreign Private Investment (Promotion and Protection) Ordinance, 1976 (XIV of 1976), is hereby repealed.

ASSET MANAGEMENT COMPANIES RULES, 1995

(The Gazette of Pakistan Extraordinary, Part II, May 20, 1995)

S.R.O. 392 (I)/95. In exercise of the powers conferred by Section 32 and 33 of the Securities and Exchange Ordinance, 1969 (XVII of 1969), the Federal Government is pleased to make the following rules to regulate the business of asset management companies, namely:-

1. Short title and commencement. (1) These rules may be called the Asset Management Companies Rules, 1995.

(2) They shall come into force at once.

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

(a) "Authority" means the Corporate Law Authority;

(b) "connected person", in relation to a company means--

(i) any person or company beneficially owning, directly or indirectly, ten per cent or more of the ordinary share capital of that company or able to exercise, directly, or indirectly, ten per cent or more of the total votes in that company;

(ii) any person or company controlled by a person who or which meets one or both of the descriptions given in clause (i);

(iii) any member of the group of which that company forms part; or

(iv) any director or officer of that company or of any of its connected persons specified in clauses (i), (ii) or (iii);

(c) "constitutive documents" means the principal documents governing the formation of the scheme, and includes the trust deed of a unit trust and all material agreements;

(d) "distribution function" means the functions with regard to--

(i) receiving application and money for units from persons;

(ii) issuing receipts in respect of the applications received in accordance with clause (i);

(iii) issuing contract notes to the applicants in accordance with the terms of the scheme; and

(iv) receiving redemption notices, transfer instructions and conversion notices from holders for immediate transmission to the management company or the scheme;

- (e) "Form" means a form set out in Schedule I;
- (f) "net assets", in relation to a scheme, means the excess of assets over liabilities of the scheme, such excess being computed in the manner specified hereunder:-
- (i) A security listed on a stock exchange shall be valued at its last sale price on such exchange on the date as of which it is valued, or if such exchange is not open on such date, then at its last sale price on the sale is reported for such date, the security shall be valued at an amount not higher than the closing asked price nor lower than the closing bid price;
 - (ii) an investment purchased and awaiting payment against delivery shall be included for valuation purposes as a security held, and the cash account of the company shall be adjusted to reflect the purchase price, including brokers' commission and other expenses incurred in the purchase thereof but not disbursed as of the valuations date;
 - (iii) an investment sold but not delivered pending receipt of proceeds shall be valued at the net sale price;
 - (iv) the value of any dividends, bonus, shares or rights which may have been declared on securities in the portfolio but not received by the company as of the close of business on the valuation date shall be included as assets of the company, if the security upon which such dividends, bonuses or rights were declared is included in the assets and is valued *ex-dividend*, *ex-bonus* or *ex-rights* as the case may be;
 - (v) a security not listed or quoted on a stock exchange shall be valued at investment price or its break-up value as per last audited accounts, whichever is lower;
 - (vi) interest accrued on any interest-bearing security in the portfolio shall be included as an asset of the company if such accrued interest is not otherwise included in the valuation of the security;
 - (vii) any other income accrued upto the date on which computation was made shall also be included in the assets; and
 - (viii) all liabilities, expenses, taxes and other charges due or accrued upto the date of computation which are chargeable under these rules, other than the paid-up capital of the company, shall be deducted from the value of the assets;
- (g) "offering document" means documents containing information on a scheme calculated to invite offers by the public purchase of the units in that scheme;
- (h) "Ordinance" means the Securities and Exchange Ordinance, 1969 (XVII of 1969);

- (i) "Schedule" means a schedule to these rules;
- (j) "scheme" means a unit trust scheme constituted by way of a trust deed which continuously offers for sale a security which entitles the holder of such security on demand to receive his proportionate share of the net assets of the security;
- (k) "trust" means a trust established by a deed under the provisions of the Trusts Act, 1882 (II of 1882);
- (l) "trustee" means a company appointed as a trustee and includes a bank licensed under the Banking Companies Ordinance, 1962 (LVII of 1962), a trust company which is a subsidiary of such a bank and a banking institution incorporated outside Pakistan acceptable to the Authority; and
- (m) "unlisted security" means a security not listed or quoted on a stock exchange.

(2) Words and expressions used but not defined herein shall have the meanings assigned to them in the Ordinance.

3. **No asset management company to commence business without registration.** No company shall commence business as an asset management company unless it is registered with the Authority under these rules.

4. **Eligibility for registration.** A company proposing to commence business as an asset management company shall be eligible for registration under these rules if,--

- (a) it is registered as a public limited company under the Companies Ordinance, 1984 (XLVII of 1984);
- (b) it has a paid up capital of not less than thirty million rupees;
- (c) no director, officer or employee of such company has been convicted of fraud or breach of trust;
- (d) no director, officer or employee of such company has been adjudicated as insolvent or has suspended payment or has compounded with his creditors; and
- (e) the promoters and directors of such company are, in the opinion of the Authority, persons of means and integrity and have special knowledge and experience of matter which the company may have to deal with as an asset management company.

5. **Registration.** (1) A company eligible for registration may make an application in Form I to the Authority for registration under these rules.

(2) The Authority may, after satisfying itself that the applicant is eligible for registration and that it would be in the interest of the capital marked so to do, grant a certificate of registration to such company in Form II.

6. **Cancellation or registration.** (1) Where the Authority is of opinion that an asset management company has contravened any provision of the Ordinance, or

has otherwise neglected or failed to comply with any requirement of these rules or has failed or neglected to carry out its duties to the satisfaction of the trustee, and the Authority or the trustee, as the case may be, considers that it would be in the interest of the unit holders so to do, the Authority may, on its own motion or on the report of the trustee, by order in writing, cancel the registration of the asset management company:

Provided that no such order shall be made except after giving the asset management company an opportunity of being heard.

(2) If the registration of an asset management company is cancelled under sub-rule (1), the Authority shall appoint another asset management company to manage the scheme or schemes as the case may be.

7. **Restrictions.** No asset management company shall,—

- (a) merge with, acquire or take over any other asset management company or a scheme, unless it has obtained the prior approval of the Authority in writing to the scheme of such merger, acquisition or takeover;
- (b) pledge any of the securities held or beneficially owned by a scheme except for the benefit of the scheme;
- (c) accept deposits from a scheme;
- (d) make a loan or advance money to any person except in connection with the normal business of the scheme;
- (e) participate in a joint account with others in any transaction;
- (f) apply any part of its assets to real estate except property for its own use;
- (g) make any investment with the purpose of having the effect of vesting the management, or control, in the scheme; and
- (h) employ as a broker, directly or indirectly, any of its director, officer or employee or a member of a family of such person which shall include spouse, parents, children, brothers and sisters.

8. **Obligations of asset management company.** An asset management company shall,—

- (a) be obliged to manage the assets of the scheme in the interest of the unit holders in good faith and to the best of its ability and without gaining any undue advantage for itself or any of its related parties or its officers;
- (b) account to the trustee for any loss in value of the assets of the scheme where such loss has been caused by its negligence, reckless or wilful act or omission;
- (c) be responsible for the acts and omissions of all persons to whom it may delegate any of its functions as manager as if they were its own acts and omission;

- (d) maintain at its principal office, proper accounts and records to enable a complete and accurate view to be formed of the assets and liabilities and the income and expenditure of the scheme, all transactions for the account of the scheme and amounts received by the scheme in respect of issues of units and paid out by the scheme on redemption of units and by way of distributions;
- (e) prepare and transmit the annual report, together with a copy of the balance sheet and income and expenditure account and the auditor's report of a scheme within four months of closing of the accounting period to the unit holders, and the balance sheet and income and expenditure account shall comply with requirements set out in Schedule II;
- (f) within two months of the close of the first half of its year of account, prepare and transmit to the unit holders and the Authority a profit and loss account for, and balance sheet as at the end of that half year, whether audited or otherwise;
- (g) maintain a register of unit holders of a scheme and inform the Authority of the address where the register is kept;
- (h) appoint, at the establishment of a scheme and upon any vacancy, an auditor who shall be a Chartered Accountant and independent of the auditor of the management company and the trustees. Contents of the auditor's report shall be in accordance with Schedule II;
- (i) furnish a copy of the annual report together with copies of the balance sheet, income and expenditure account and the auditor's report of a scheme to the Authority within four months of the close of the accounting period together with a statement containing the following information, namely:-
 - (i) total number of unit holders; and
 - (ii) particulars of the personnel (executive, research and other) of the asset management company; and
- (j) furnish a copy of the company's annual report together with copies of the balance sheet, income and expenditure account and the auditors' report within four months of the close of the accounting period.

9. **Remuneration payable to asset management company.** An asset management company shall be entitled to a remuneration,-

- (a) during the first five years of the scheme, of an amount not exceeding three per cent of the net assets of the scheme as at the end of its year of accounts and thereafter of an amount equal to two per cent of such assets; and
- (b) of an amount not exceeding one-half of the amount of which the dividend distributed by the scheme exceeds twenty per cent.

10. **Authorization of scheme.** (1) No scheme shall be offered to the public unless the same is authorised by the Authority.

(2) An application for authorization of a scheme shall contain information as specified in Form III and shall be accompanied by the following information and documents, namely:-

- (a) The scheme's constitutive documents contents of which have been set out in Schedule III;
- (b) the management company's latest audited accounts, if applicable, and resumes of its directors;
- (c) the trustee's latest audited accounts, if available;
- (d) letter of consent to the appointment from the trustee;
- (e) an undertaking from the management company that it will invest or arrange the investment of two hundred fifty million rupees for a minimum period of two years; and
- (f) application fee of twenty thousand rupees in the form of bank draft payable to the Authority.

11. De-authorization. (1) Following the authorization of a scheme, its management shall give at least three months' notice to unit holders if it is intended not to maintain such authorization.

(2) If the Authority considers that further continuation of the authorization of the scheme will not be in the interest of unit holders, it will give a three months' notice to the unit holders about the Authority's intention not to maintain such authorization:

Provided that no notice shall be served without offering an opportunity of hearing to the management company.

(3) In case of de-authorization, the management company shall be required to wind-up the scheme and refund the proceeds to the unit holders in such manner and within such time as may be specified.

12. Advertisement and invitations. (1) Advertisements and other invitations to the public in Pakistan to invest in a scheme, including public announcements, shall be submitted to the Authority for approval prior to their issue.

(2) The offering documents shall contain the information set out in Schedule IV.

(3) Any advertisement or invitation submitted for approval which concern the trustee must be accompanied by its written consent.

(4) The approval so granted may be varied or withdrawn by the Authority after giving an opportunity of hearing to the management company.

(5) Approval of an advertisement or invitation shall be valid for a period of six months from the date of approval provided that there is no change in the scheme.

13. Investment policy and diversification. (1) Investment policy with respect to a scheme shall be clearly and concisely stated in public offering document for the sale of securities of such scheme.

(2) A scheme shall invest not less than fifty per cent of its assets in listed securities or in securities for the listing of which an application has been approved by a stock exchange.

(3) Investment of a scheme in any company shall not, at any time, exceed an amount equal to ten per cent of the total net asset value of the scheme at the time of investment or ten per cent of the issued capital of the company.

(4) No scheme shall invest more than twenty-five per cent of its net asset value in securities of any one sector as per classification of stock exchanges.

14. Short sale not allowed. No scheme shall effect a short sale in a security whether listed or unlisted.

15. Limitations and prohibitions. (1) No scheme shall lend, assume, guarantee, endorse or otherwise become directly or contingently liable for or in connection with any obligation or indebtedness of any person.

(2) The maximum borrowing of a scheme shall not exceed twenty-five per cent of its total net asset value.

(3) The scheme shall not invest in any security of a company if any director or officer of the management company owns more than five per cent of the total nominal amount of the securities issued, or, collectively the directors and officers of the management company owns more than ten per cent of those securities.

16. Appointment of trustees. Every investment scheme for which authorization is requested shall appoint a trustee with the approval of the Authority.

17. Conditions applicable to trustees. A trustee shall be,--

- (a) a scheduled bank licensed under the banking Companies Ordinance, 1962 (LVII of 1962), and have been in business for at least five years; or
- (b) a trust company which is a subsidiary of a scheduled bank; or
- (c) a foreign bank operating as a scheduled bank in Pakistan and operating as trustee internationally; or
- (d) a central depository company approved by the Authority.

18. Obligations of trustees. A trustee shall,--

- (a) (i) take into its control all the property of the scheme and hold it in trust for the unit holders in accordance with the law and the provision of the constitutive documents; and the cash and registerable assets shall be registered in the name of, or to the order of, the trustee;
- (ii) be liable for any act or omission of any agent with whom any investments are deposited as if they were the act or omission of

any nominee in relation to any investment forming part of the property of the scheme; and

- (iii) be liable for the acts and omissions of the lenders and its agents in relation to assets forming part of the property of the scheme and, where borrowing is undertaken for the account of the scheme, such assets may be registered in the lender's name or in that of a nominee appointed by the lender;
- (b) ensure that the sale issue, repurchase, redemption and cancellation of units effected by a scheme are carried out in accordance with the provisions of the constitutive documents;
- (c) ensure that the methods adopted by the management company in calculating the value of units are adequate to ensure that the sale, issue, repurchase, redemption and cancellation prices are calculated in accordance with the provisions of the constitutive documents;
- (d) carry out the instructions of the asset management company in respect of investments unless they are in conflict with the provisions of the offering or constitutive documents;
- (e) ensure that the investment and borrowing limitations set out in the constitutive documents and the conditions under which the scheme was authorised are complied with;
- (f) issue a report to be included in the annual report to be sent to unit holders whether, in the trustees' opinion the asset management company has in all material respects managed the scheme in accordance with the provisions of the constitutive documents, if the asset management company has not done so, the respects in which it has not done so and the steps which the trustee has taken in respect thereof, and
- (g) ensure that unit certificates are not issued until subscription moneys have been paid.

19. Retirement of trustee. A trustee may, subject to prior approval of the Authority, retire from his office on appointment of a new trustee and the retirement shall take effect at the same time as the new trustee is appointed.

20. Trustee and the asset management company to be independent. (1) The trustee shall not in any way be related to the asset management company.

(2) A director or employee of the trustee shall not be involved in the management company.

21. Remuneration payable to the trustee. A trustee shall be entitled to such fee or remuneration as may be allowed by the management company.

22. Pricing, issue and redemption of units. (1) If an initial offer is made, no investment of subscription money shall be made until the conclusion of the first issue of units at the initial price.

(2) Offer and redemption prices shall be calculated on the basis of the scheme's net asset value divided by the number of units issued and such prices may be adjusted by fees and charges, provided that the amount or method of calculating such fees and charges is clearly disclosed in the offering documents.

(3) The value of investments not listed or quoted on a stock exchange shall be determined on a regular basis by the management company with the approval of the trustee.

(4) There must be at least four regular dealing days per week.

(5) Any offer price which the management company or the distribution company quotes or publishes must be the maximum price payable on purchase and any redemption price must be the net price receivable on redemption.

(6) The maximum interval between the receipt of a properly documented request for redemption of units and the payment of the redemption money to the holder shall not exceed six working days unless redemption has been suspended.

(7) Where a scheme deals at a known price, and based on information available, where the price exceeds or falls short of the current value of the underlying assets by more than five per cent, the management company shall defer dealing and calculate a new price as soon as possible.

(8) A permanent change in the method of dealing shall be made after one month's notice to unit holders.

(9) A temporary change may only be made,--

(a) in exceptional circumstances, having regard to the interests of unit holders;

(b) if the possibility of a change and the circumstances in which it can be made have been fully disclosed in the offering documents; and

(c) with the approval of the trustee.

(10) Suspension of dealings shall be provided for only in exceptional circumstances, having regard to the interests of unit holders.

(11) The management company shall immediately notify the Authority if dealing in units ceases or is suspended and the fact that dealing is suspended shall also be published immediately following such decision in the newspaper in which the scheme's prices are normally published.

(12) Where redemption requests on any one dealing day exceed ten per cent of the total number of units in issue, redemption requests in excess of ten per cent may be deferred to the next dealing day.

23. Transaction with connected persons. (1) No person shall be allowed to enter on behalf of the scheme into underwriting or sub-underwriting contracts without the prior consent of the trustee unless the scheme or the management company provides in writing that all commissions and fees payable to the

management company under contracts and all investments acquired pursuant to such contracts shall form part of the scheme's assets.

(2) If cash forming part of the scheme's assets is deposited with the trustee, which is not a subsidiary of a banking company, return shall be received on the deposit at a rate not lower than the prevailing rate for a deposit of the size and term.

(3) All transactions carried out by or on behalf of the scheme shall be made as provided in the constitutive documents, and shall be disclosed in the scheme's annual report.

(4) No single connected stock-broker shall account for thirty per cent or more of the scheme's transactions in value in any one financial year of the scheme:

Provided that the Authority may, in each case on merits, permit the thirty per cent to be exceeded if the connected broker offers advantages to the scheme not available elsewhere.

SCHEDULE I

FORM I

[See rule 5 (1)]

FORM OF APPLICATION FOR REGISTRATION OF AN ASSET MANAGEMENT COMPANY

To

The Corporate Law Authority,
Government of Pakistan,
Islamabad.

Dear Sir,

We hereby apply for the grant of registration of
... .. (Name of asset management company).

Under rule 5 of the Asset Management Companies Rules, 1995.

Two copies of the memorandum and articles of association are enclosed.

Necessary information required in the annex to this form is furnished. We undertake to keep this information up-to-date at all times.

Yours faithfully

Signature of a Director
of the applicant.

ANNEX TO FORM I

1. Name address and telephone number(s) of applicant.
2. Names and addresses of directors.
3. Whether any director has been convicted of fraud or breach of trust.
4. Whether any director has been adjudicated as insolvent or has suspended payment or has compounded with his creditors.
5. Names and addresses of senior management/officers.
6. Whether any officer has been convicted for fraud or breach of trust.
7. Whether any officer has been adjudicated as insolvent or has suspended payment or has compounded with his creditors.
8. Whether any director or officer has any interest in asset management company.
9. What is the financial standing of the directors.
10. Give a brief description of the kind of management services proposed to be provided, the organizational set up, previous professional experience of directors and officers, etc.

FORM II

[See rule 5 (2)]

**CERTIFICATE OF REGISTRATION AS AN ASSET
MANAGEMENT COMPANY****GOVERNMENT OF PAKISTAN
CORPORATE LAW AUTHORITY**

Islamabad, the 19.

The Corporate Law Authority, having considered the application for registration of the' and being satisfied that the said' is eligible for registration and that it would be in the interest of the capital market so to do, in exercise of the powers conferred by sub-rule (2) of Rule 5 of the Asset Management Companies Rules, 1995, hereby grants registration the' subject to the conditions stated herein below;

(Signature of the Officer)

* Name of the Company.

FORM III

[See rule 10 (2)]

**INFORMATION TO BE CONTAINED IN THE APPLICATION FOR
AUTHORIZATION OF A SCHEME**

Details of the scheme:--

1. Name of the scheme.
2. Structure of the scheme.
3. Launch; date and place.
4. Dealing; daily/weekly/other.
5. Valuation of assets; daily/weekly/other.
6. Pricing policy.
7. Investment plans to be offered.

For each Scheme:--

10. (a) Fee structure;

- (i) Level of all charges payable by investor; and
- (ii) Level or basis of calculation of all charges payable by the scheme.

Details of the parties to the scheme:--

11. The asset management company;

- (a) Name.
- (b) Registered or business address.
- (c) Name of the ultimate holding company, if any.
- (d) Previous approval of the Authority to manage authorized schemes.

If no, the resumes of the directors and most recent audited financial report.

12. The trustee;

- (a) Name.
- (b) Registered or business address.
- (c) Name of the ultimate holding company, if any.
- (d) Previous approval of the authority as trustee of authorized schemes.

If no, names of the directors and most recent audited financial report.

13. For the trustee and asset management company:

- (a) Which, if any, of these companies are connected persons?
- (b) Name anyone who holds appointments, as director or officer, with more than one of these companies.

14. Distribution company;

- (a) Name.
- (b) Registered or business address.
- (c) Name of ultimate holding company.

15. The auditor;

- (a) Name.
- (b) Registered or business address.

16. The principal broker;

- (a) Name.
- (b) Registered or business address.

(c) The approximate percentage of the scheme's transactions in value of securities carried out by the principal broker within the latest financial year of the scheme.

(d) Whether the trustee, the directors of the scheme or the asset management company is a connected person of the principal broker?

17. Legal Adviser:

(a) Name.

(b) Registered or business address.

SCHEDULE II

[See rule 8(e)(h)]

CONTENTS OF FINANCIAL REPORTS

1. **General.** (1) Annual report must contain all the information required in this Schedule. Interim reports must at least contain the statement of asset and liabilities and the investment portfolio. Where the scheme has paid or proposes to pay an interim dividend, the amount of dividend should be disclosed.

(2) All reports must contain comparative figures for the previous period except for the investment portfolio.

(3) The items listed under the statement of assets and liabilities income statement distribution statement, statement of movements in reserves and the notes to the accounts, where applicable, must be disclosed. It is, however, not mandatory to adopt the format as shown or to disclose the items in the same order.

2. **Statement of assets and liabilities.** The following must be separately disclosed:--

- (1) Total value of investments;
- (2) bank balances;
- (3) preliminary and floatation costs;
- (4) dividends and other receivables;
- (5) amounts receivable on subscription;
- (6) bank loan and overdrafts or other forms of borrowings;
- (7) amounts payable on redemption;
- (8) distribution payable;
- (9) total value of all assets;
- (10) total value of all liabilities;
- (11) net asset value;

(12) number of units issued; and

(13) net asset value per unit.

3. Income Statement. (1) Total investment income net of withholding tax, broken down by category.

(2) Total other income broken down by category.

(3) Element of income and capital gains in prices of units sold less those in redemption.

(4) An itemized list of various costs which have been debited to the scheme including--

--- fees paid to the management company;

--- remuneration of the trustee;

--- amortization of formation costs;

--- director's fee and remuneration;

--- safe custody and bank charges;

--- auditor's remuneration;

--- borrowing expenses;

--- other amounts paid to any connected person of the scheme;

--- legal and other professional fees; and

--- any other expense borne by the scheme.

(5) Taxes.

(6) Amounts transferred to and from reserves.

(7) Net income to be carried forward for distribution.

4. Distribution Statement. (1) Amount brought forward at the beginning of the period.

(2) Net income for the period.

(3) Interim distribution per unit and date of distribution.

(4) Final distribution per unit and date of distribution.

(5) Undistributed income carried forward.

5. Statement of Movements in Reserves. (1) Value of the scheme as at the beginning of the period.

(2) Number of units issued and the amount received upon such issuance.

(3) Number of units redeemed and the amount paid on redemption.

(4) Any item resulting in an increase or decrease in value of the scheme including:--

- (i) Surplus or loss on sale of investment;
 - (ii) exchange gain or loss;
 - (iii) unrealized appreciation or diminution in value of investments; and
 - (iv) net income for the period less distribution.
- (5) amounts transferred to and from the revenue account.
- (6) value of the scheme as at the end of the period.

6. **Note to the accounts.** The following matters shall be set out in the notes to the accounts.

(1) *Principal accounting policies:*

(a) The basis of valuation of the assets of the scheme including the basis of valuation of unquote and unlisted securities;

(b) the revenue recognition policy regarding dividend income and other income;

(c) foreign currency translation, if any;

(d) the basis of amortization of formation costs;

(e) taxation; and

(f) any other accounting policy adopted to deal with items which are judged material or critical in determining the transactions and in stating the disposition of the scheme.

Note. Any changes to the above accounting policies and their financial effects upon the accounts should also be disclosed.

(2) Transactions with connected persons:

The following transactions should be disclosed:--

(1) Details of all transactions entered into during the period between the scheme and the management company, or any entity in which these parties or their connected persons have a material interest; and

(2) name of any director of the management company or any connected person if such a person becomes entitled to profits from transactions in shares or from management of the scheme and the amount of profits to which such person becomes entitled.

(3) *Borrowings:*

(1) State whether the borrowings are secured or unsecured and the duration of the borrowings.

(2) Contingent liabilities and commitments of the scheme.

(3) If the free negotiability of any asset is restricted by statutory or contractual requirements, this must be stated.

7. **Contents of the auditors' report.** The report of the auditor should state:—

(1) whether in the auditor's opinion, the accounts prepared for that period have been properly prepared in accordance with the relevant provisions of the trust deed and the rules;

(2) without prejudice to the foregoing, whether in the auditor's opinion, a true and fair view is given of the disposition of the scheme at the end of the period and of the transactions of the scheme of the period then ended;

(3) if the auditor is of opinion that proper books and records have not been kept by the scheme or the accounts prepared are not in agreement with the scheme's books and records, that fact; and

(4) if the auditor has failed to obtain all the information and explanations which, to the best of his knowledge and belief, are necessary for the purpose of the audit, that fact.

8. **Investment portfolio.** (1) Number or quantity of each holding together with the description and market value.

(2) The total investment stated at cost.

(3) The value of each holding as a percentage of net asset value.

(4) Statement of movements in portfolio holding since the end of the preceding accounting period.

9. **Performance table.** (1) A comparative table covering the last three financial years and including, for each financial year, at the end of the financial year:—

(a) total net asset value; and

(b) net asset value per unit.

(2) A performance record over the last ten financial years; or if the scheme has not been in existence during the whole of that period in which it has been in existence, showing the highest issue price and the lowest redemption price of the units during each of those years.

SCHEDULE III

[See rule 10(2) (a)]

CONTENTS OF THE CONSTITUTIVE DOCUMENTS

1. Name of scheme.
2. Participating parties;

A statement to specify the participating parties including the asset management company and trustee.

3. Governing law.

4. For unit trusts:--

(a) A statement that the deed is binding on each holder as if he had been a party to it and so to be bound by its provisions and authorizes and requires the trustee and the management company to do as required of them by the terms of the deed.

(b) A provision that a holder is not liable to make any further payments after he had paid the purchase price of his units and that no further liability can be imposed on him in respect of the units which he holds.

(c) A declaration that the property of the scheme is held by the trustee on trust for the holders of the units *pari passu* according to the number of units held by each holder. (This may be modified as appropriate for schemes offering income and accumulation units).

(d) A statement that the trustee will report to unit holders in accordance with the rules.

(e) A statement of the manner in which the trustee should retire.

5. Role of management company:

A statement to list the obligations of the management company in accordance with the rules.

6. Investment and borrowing restrictions:--

A statement to list the restrictions on the investment of the deposited property and the maximum borrowing limit of the scheme.

7. Valuation of property and pricing;

The following rules on valuation of property and pricing must be stipulated:--

(a) the method of determining the value of the assets and liabilities of the property of the scheme and the net asset value accordingly;

(b) the method of calculating the issue and redemption prices; and

(c) the method of pricing and the circumstances under which it can change.

8. Dealing, suspension and deferral of dealing:

The following must be stated:--

(a) The circumstances under which the dealing of units can be deferred or suspended;

(b) the maximum interval between the receipt of a properly documented request for redemption of units and the payment of the redemption money to the holder not to exceed six working days; and

(c) the circumstances under which the dealing may be suspended.

9. Fees and charges;

The following must be stated:--

- (a) The maximum percentage of the initial charge payable to the management company out of the issue price of a unit;
- (b) the maximum fee payable to the management company out of the property of the scheme, expressed as an annual percentage;
- (c) remuneration payable to trustee;
- (d) formation cost to be amortized against the property of the scheme; and
- (e) all other material fees and charges payable out of the property of the scheme.

10. Transactions with connected persons:

The following must be stated:--

- (a) Cash forming part of the property of the scheme may be placed as deposits with the trustee or an institution licensed to accept deposits;
- (b) money can be borrowed from the trustee or any other institution provided that the charges are not higher than the normal bank charges; and
- (c) any transaction between the scheme and the management company or any of their connected persons as principal may only be made with the prior written consent of the trustee.

11. Distribution policy and date;

The approximate date(s) in the calendar year on which annual income, if any, will be distributed.

12. Annual accounting period:

The date in the calendar year on which the annual accounting period ends.

13. Base currency:

A statement of the base currency of the scheme.

14. Modification of the constitutive documents:

A statement of the means by which modifications to the constitutive documents can be effected.

15. Termination of scheme:

A statement of the circumstances in which the scheme can be terminated.

SCHEDULE IV

[See rule 12 (2)]

INFORMATION TO BE DISCLOSED IN THE OFFERING DOCUMENT

Notice:—This list is not intended to be exhaustive. The directors of the schemes or the management company are obliged to disclose any information which may be necessary for investors to make an informed judgment.

Constitution of the scheme:

1. Name, registered address and place and date of creation of the scheme, with an indication of its duration if limited.

Investment objectives and restrictions:

2. Details of investment objectives and policy, including Summary of the investment and borrowing restrictions.

If the nature of the investment policy so dictates, a warning that investment in the scheme is subject to abnormal risks, and a description of the risks involved.

Operators and principals:

3. The names and registered addresses of the following parties, where applicable;

- (a) The directors of the asset management company;
- (b) the trustee;
- (c) foreign promoters, if any;
- (d) the distribution company;
- (e) the auditor;
- (f) the registrar; and
- (g) the legal adviser.

Characteristics of units:

4. Minimum investment, if any.
5. A description of the different type of units.
6. Frequency of valuation and dealing, including days.
7. Application and redemption procedures.
8. The mode of the unit price announcement.
9. Procedure for subscribing/redeeming/conversion of units.
10. The maximum interval between the request for redemption and the payment of the redemption proceeds.

11. A Summary of the circumstances in which dealing in units may be deferred or suspended.

12. It must be stated that no money should be paid to any intermediary except the unit holder or his authorised representative.

Distribution policy:

13. The distribution policy indicating the time period for distribution of dividend.

Fees and charges:

14. (a) the level of all fees and charges payable by an investor, including all charges levied on subscription and redemption and conversion, and

(b) the level of all fees and charges payable by the scheme, including management fee, advisory fee, trustee fee and preliminary and/or floatation expenses.

Taxation:

15. Details of exemptions, taxes levied on the scheme's income and capital including tax, if any, deductible on distribution to unit holders.

Reports and accounts:

16. The date of the scheme's financial year.

17. Particulars of the reports to be sent to the unit holders.

Warnings:

18. The following statements or warnings must be prominently displayed in the offering document:--

(a) if you are in any doubt about the contents of this offering document, you should consult your stock broker, bank manager, legal adviser or other financial adviser.

(b) A warning that the price of units and the income from them (where income is distributed) may go down as well as up.

General information:

19. A list of constitutive documents and the address where they can be inspected free of charge or purchased.

20. The date of publication of the offering document.

21. A statement that the asset management company accepts responsibility for the information contained in the offering document as being accurate at the date of publication.

22. Details of schemes not authorized must not be shown in the offering document.

Termination of scheme:

23. A Summary of the circumstance in which the scheme can be terminated.

CREDIT RATING COMPANIES RULES, 1995

S.R.O. 759(I)/95, Gaz., Pak., Ext. 29.7.1995. In exercise of powers conferred by section 33 of the Securities and Exchange Ordinance, 1969 (XVII of 1969), the Federal Government is pleased to make the following rules to regulate the business of credit rating companies, namely:--

1. **Short title and commencement.** (1) These rules may be called the Credit Rating Companies Rules, 1995.

(2) They shall come into force at once.

2. **Definitions.** In these rules, unless there is anything repugnant in the subject or context,--

(a) "Authority" means the Corporate Law Authority;

(b) "company" means a company incorporated under the Companies Ordinance, 1984 (XLVII of 1984);

(c) "credit rating company" means a company which intends to engage in or is so engaged primarily in the business of evaluation of credit risk through a recognised and formal process of assigning rating to present or proposed loan obligations of any business enterprise;

(d) "form" means a form set out in the Schedule to these rules; and

(e) "Ordinance" means the Securities and Exchange Ordinance, 1969 (XVII of 1969).

3. **Eligibility for registration.** A company proposing to commence business as a credit rating company shall be eligible for registration under these rules if it fulfils or complies with the following conditions or requirements, namely:--

(a) That such company is incorporated as a limited company under the Companies Ordinance, 1984 (XLVII of 1984);

(b) that such company has entered into a joint venture or technical collaboration arrangement with an internationally recognised credit rating institution;

(c) that no director, officer or employee of such company has been convicted of **fraud or breach of trust** or has been adjudicated as insolvent; and

(d) that the promoters of such company are, in the opinion of the Authority, persons of means and integrity and have special knowledge of matters which the company may have to deal with as a credit rating company.

4. **Registration.** (1) Any company which is eligible for registration under rule 3 as a credit rating company may make an application in Form I to the Authority for registration.

(2) An application under sub-rule (1) shall, besides the other documents referred to in Form I, be accompanied by a fee of one hundred thousand rupees as registration fee.

(3) The Authority may, if it is satisfied after such enquiry and after obtaining such further information as it may consider necessary, —

(i) that the applicant is eligible for registration; and

(ii) that it would be in the interest of the capital market so to do;

may grant a certificate of registration to such company in Form II.

5. Renewal of registration. (1) The certificate of registration of a company shall be valid for one year and shall be renewable on payment of a fee of ten thousand rupees through an application made on Form III.

(2) The Authority shall, after making such enquiry and after obtaining such further information as it may consider necessary, renew the registration of such company for one year in Form IV within thirty days of the receipt of the application or further information, as the case may be.

6. Cancellation of registration. Where the Authority is of the opinion that a credit rating company has contravened any provision, or has otherwise failed to comply with any requirement of the Ordinance or of any rule or direction made or given thereunder, the Authority may, if it considers necessary in the public interest so to do, by order in writing, cancel the registration of the credit rating company:

Provided that no such order shall be made except after giving the credit rating company an opportunity of being heard.

7. Power of the Authority to give directions. The Authority may, if it is satisfied that it is necessary or expedient so to do in the public interest or in the interest of capital market, by order in writing, give direction to a credit rating company.

8. Submission of ratings report to the Authority. (1) Every credit rating company shall submit to the Authority a report giving details of credit ratings, fee structure, etc., carried out during the year, within six months of the close of its year of accounts or alongwith the application for renewal of registration, whichever is earlier.

Explanation. For the purpose of this sub-rule the expression "credit rating" means formal evaluation of credit history of the company and capability of repaying its obligations.

(2) Without prejudice to the provisions of sub-rule (1), a credit rating company shall furnish to the Authority such other documents, information or explanation relating to its affairs as the Authority may, at any time, by order in writing, require.

9. Restriction on Directors of Credit Rating Companies. No director of the credit rating company shall be a director of a corporate entity or a business firm or

a share holder holding 5% or more of any corporate entity or business firm or in any other way interested in such an entity subject to rating by the rating company.

10. **Secretary.** No director, officer or employee of the credit rating company shall communicate the information, acquired by him for use for rating purposes, to any other person except where required under law to do so.

SCHEDULE

FORM I

[See rule 4 (1)]

FORM OF APPLICATION FOR REGISTRATION AS A CREDIT RATING COMPANY

To

The Corporate Law Authority,
Government of Pakistan,
Islamabad.

Dear Sir,

We hereby apply for registration of
..... (Name of Credit Rating Company) under
rule 4 of the Credit Rating Companies Rules, 1995.

2. A copy of the Memorandum and the Articles of Association is enclosed.

3. Necessary information required in the annex to this Form is furnished. We undertake to keep the information up to date at all times.

Yours faithfully

Signature

of the Chief Executive

Annex to Form I

1. Name, address and telephone number(s) of the company.
2. Date and place of incorporation
.....
3. Names and addresses of promoters and directors
.....
4. Details of joint venture or technical collaboration agreement with an internationally recognised credit rating company and a copy of such an agreement and documentary evidence in respect thereof
.....
.....
5. Proposed rating methodology and scale of rating
.....
6. Whether any director has been convicted of fraud or breach of trust.
7. Whether any director has been adjudicated as insolvent.
8. Names and addresses of senior management officers.
.....
9. Whether any officer or employee has been convicted of fraud or breach of trust.
10. Whether any senior management officer has been adjudicated as insolvent or has suspended payment or has compounded with his creditors.
.....
11. Previous experience of the promoters/directors in the credit rating field.

12. Previous experience of senior management officers.

Note.-(i) An affidavit shall, from each promoter/director and officer in respect of statement at serial Nos. 6 and 7 be submitted.

(ii) Certification by the proposed chief executive of the company in respect of statement at serial Nos. 9 and 10 shall be submitted.

FORM II

[See rule 4(3)]

CERTIFICATE OF REGISTRATION AS CREDIT RATING COMPANY GOVERNMENT OF PAKISTAN

CORPORATE LAW AUTHORITY

No. Islamabad, the 199 ..

The Corporate Law Authority having considered the application for registration under rule 4 of the Credit Rating Companies Rules, 1995 by
..... (Name of the credit rating company) and being satisfied that the said company is eligible for registration and that it would be in public interest and in the interest of the capital market so to do, hereby grants, in exercise of the powers conferred by rule 4 of the Credit Rating Companies Rules, 1995 registration to subject to the provisions of the Securities and Exchange Ordinance, 1969 (XVII of 1969) and the rules made thereunder.

2. This certificate of registration is valid up to.....

Signature of the Officer,

FORM III

[See rule 5(1)]

FORM OF APPLICATION FOR RENEWAL OF REGISTRATION AS A CREDIT RATING COMPANY

To

Corporate Law Authority,
Government of Pakistan,
Islamabad.

Dear Sir,

We hereby apply for the renewal of the registration of
 (Name of the credit
 rating company) under rule 5 of the Credit Rating Companies Rules, 1995.

2. The certificate of registration/certificate of renewal is due to expire
 on... ..

3. Original receipt of the treasury/bank for the fee of Rs... ..
 being the renewal fee is enclosed.

4. It is requested that the registration be renewed for the calendar year

Yours faithfully,

Signature of the Chief Executive

FORM IV

[See Rule 5 (2)]

CERTIFICATE OF RENEWAL OR REGISTRATION AS CREDIT RATING COMPANY

GOVERNMENT OF PAKISTAN CORPORATE LAW AUTHORITY

No... .. Islamabad, the 199 .

The Corporate Law Authority having considered the application for renewal of registration under rule 5 of the Credit Rating Companies Rules, 1995 by
 (Name of the credit rating company) and being satisfied that it would be in public interest and in the interest of the capital market to renew the registration of... .. (Name of the credit rating company) hereby grants, in exercise of the powers conferred by rule 5 of the Credit Rating Companies Rules, 1995, certificate of renewal of registration to the said company subject to the provisions of the Securities and Exchange Ordinance, 1969 (XVII of 1969) and the rules made thereunder.

Signature of the Officer.

LEASING COMPANIES (ESTABLISHMENT AND REGULATION) RULES, 1995

[The Gazette of Pakistan, Extraordinary, Part II, Nov. 16, 1995]

S.R.O. 1107 (1)/95. In exercise of the powers conferred by section 506 of the Companies Ordinance, 1984 (XLVII of 1984), read with the Finance Division Notification No. S.R.O. 698(I)/86, dated 2nd July, 1986, Corporate Law Authority hereby makes the following rules, namely:--

1. Short title and commencement. (1) These rules may be called the Leasing Companies (Establishment and Regulation) Rules, 1995.

(2) They shall come into force with immediate effect.

2. Definition. In these rules, unless there is anything repugnant in the subject or context:--

- (a) "Authority" means the Corporate Law Authority.
- (b) "Certificate of Investment" means a certificate of investment issued by a leasing company under these rules;
- (c) "company" means a company incorporated under the Companies Ordinance, 1984 (XLVII of 1984).
- (d) "leasing company" means a company which intends to engage or has engaged principally in the business of leasing; and
- (e) "Ordinance" means the Companies Ordinance, 1984 (XLVII of 1984).

3. Eligibility conditions for the establishment of a leasing company. A leasing company may be established if each of its sponsors, proposed directors, proposed chief executive and proposed chairman of the Board of Directors fulfils certain specified terms and conditions, namely:--

- (a) he has not been associated with any illegal banking business, deposit taking and financial dealing;
- (b) he or companies in which he is a director or has a financial interest, have no over-due loans or instalments outstanding towards banks and other financial institutions;
- (c) he has not got any loans rescheduled which involved write off;
- (d) neither he nor the companies in which he is a director and has a financial interest, have any case pending or decided for default or taxes as on the date of application;

- (e) he has not been sponsor, director or a financial interest holder, major shareholder or chief executive of a defaulting cooperative finance society or defaulting finance company;
- (f) he has never been convicted of fraud or breach of trust or of an offense involving moral turpitude or removed from service;
- (g) he has neither been adjudged an insolvent nor has suspended payment or defaulted in making payments, or has compounded with his creditors;
- (h) he being nominee proposed director, is not already director in any other leasing company, bank or financial institution (strike off, if not applicable);
- (i) his net-worth is not less than the amount to be subscribed by him personally; and
- (j) that the proposed chief executive and at least two of the proposed sponsor directors have senior level leasing and investment experience.

4. **Permission to form a leasing company.** (1) Those desirous of forming a leasing company shall make an application to the Authority in Form-I providing information as given in Annexure thereto, alongwith all the relevant documents and treasury receipt evidencing the payment of non-refundable processing fee amounting to one hundred thousand rupees.

(2) The Authority may, if it satisfied that the persons seeking permission to form the leasing company have fulfilled the terms and conditions specified in rule 3, permit by an order in writing the establishment of a leasing company, to such persons.

5. **Commencement of leasing operations.** (1) A leasing company shall commence business and its operations only after it has been issued a licence under these rules by the Authority.

(2) For obtaining a licence to operate as a leasing company:--

- (a) an application shall be made to the Authority on Form-II; and
- (b) an undertaking shall be given that no change in the Memorandum and Articles of Association nor any change in the majority share holders and directors shall be made without prior written authorisation of the Authority and that all requirements of law and conditions of registration shall be complied with.

(3) The licence to carry on business as a leasing company shall be granted by the Authority in Form-III.

6. **Conditions for grant of licence.** A leasing company shall not be granted licence unless it;

- (a) is incorporated as a public limited company under the Ordinance;

- (b) has a minimum paid-up capital of two hundred million rupees and fifty per cent of which has been offered to the general public (relaxable in case of foreign participation);
- (c) is listed on a stock exchange in Pakistan;
- (d) has allotted at least fifteen percent of the total shares to the sponsors directors in their personal names (whose number should not be less than seven).
- (e) its sponsor directors shall not dispose of their shares in any manner whatsoever for a minimum period of three years;
- (f) has stated, clearly and concisely, its financing and leasing policy in its Memorandum of Association and the prospectus published for public offer of its shares;
- (g) has certified that the Chairman or the chief executive of the leasing company does not hold such office in any other leasing company or bank or investment bank or insurance company or modaraba company;
- (h) has certified that its Chief Executive and at least two of the directors have senior level leasing and investment experience;
- (i) has certified that more than twenty five percent of its sponsors/directors are not from the same family; *i.e.* husband/brothers/sisters/parents, children and any other blood relations; and
- (j) has appointed a Chartered Accountant or Cost and Management Accountant or a person having Master's Degree in Commerce or Business Administration with at least five years' relevant experience as its Chief Accounting Officer.

7. **Terms and conditions of operation.** A leasing company shall operate in accordance with the following conditions, namely:--

(a) It shall:--

- (i) invest at least seventy per cent of its funds in leasing business;
- (ii) disclose all loans exceeding twenty per cent of their paid up capital and free reserve in its accounts;
- (iii) disclose all loans taken by it and the use of such loans during a financial year; and
- (iv) maintain accounts of leasing operations having regard of the international Accounting Standard No. 17.

(b) It shall not:--

- (i) make exposure to a single group for more than twenty per cent of the over-all portfolio of leasing;
- (ii) make exposure to its directors, affiliated companies and companies in which any of the directors or his family members hold controlling

interest for more than ten per cent of the over-all portfolio of leasing;

- (iii) undertake the business of real estate or provide funds to the construction companies, builders and developers and companies dealing in real estate;

Provided that a leasing company may lease machinery and equipment to the construction companies;

- (iv) undertake directly or indirectly, business of an investment company, bank, insurance company or managing agency business as restricted in law or any other unlawful operations notwithstanding anything contained in the companies' Memorandum and Articles of Association;

- (v) engage in leasing operations pertaining to--

(a) open land;

(b) buildings (other than factory building and office building located within or outside the factory premises to be used exclusively as such by a lease subject to a maximum of 120 square feet per employee and residential undertaking and warehouses); and

(c) furniture or furnishing of any type;

Provided that the company may lease hard furniture excluding carpets and curtains etc., upto five per cent of their portfolio.

- (vi) fix the period of lease less than three years in the case of any lease agreement.

(c) The Company shall be subject to such restrictions as are laid down in the third Schedule to the Income Tax Ordinance, 1979 (XXXI of 1979) and the rules made thereunder.

(d) The companies granted licence before the commencement of these rules and having paid up capital less than two hundred million rupees, shall be required to raise their paid up capital to that limit within five years from the date of commencement of these rules.

8. Bar on purchase or sale by beneficial owners. A leasing company shall not, without the prior approval in writing of the Authority, purchase anything from, or sell anything to any director, officer, employee of the company or from or to a person who either individually or in concert with close relatives beneficially owns ten per cent or more either of the equity or other securities with voting rights, if any, issued by such leasing company.

9. Issue of certificate of investment. (1) A leasing company which fulfils the following conditions, may apply to the Authority for its permission to issue certificates of investment, namely;

- (a) the company has been actively engaged in leasing business for a period of two years and has been earning a profit of not less than fifteen per cent during the said period; and
- (b) the corporate and fiduciary conduct of the company and its directors has been satisfactory.

(2) If the Authority is satisfied that the company fulfils the conditions of eligibility specified in rule 9(1), it may give permission to such company to issue certificates of investment.

(3) All leasing companies issuing certificates of investment shall observe the following conditions:--

- (a) A certificate of investment issued under these rules shall be registered in the name of the person to whom it is issued;
- (b) the maturity period of certificate of investment shall be three months, six months, one year, two years, three years, four years and five years provided that the certificate shall be redeemable before its maturity period but not earlier than the minimum maturity period of three months;
- (c) the return on certificates of investment shall be on uniform basis and shall be paid out of and to the extent of profits of the company;
- (d) no advertisement inviting the general public for making investment in such certificates shall be published unless prior approval of the Authority to this effect has been obtained;
- (e) any public notice or offer issued in connection with the sale of certificates of investment shall specify that the principal and return profit is not guaranteed by the Government of Pakistan; and
- (f) ten per cent of the resources raised through certificates of investment shall either be invested in Government securities or maintained in cash.

10. Monitoring and regulation. For purposes of monitoring and regulation, a leasing company shall be treated as non-banking financial institution and be subject to same monitoring and regulation arrangements as may be prescribed by the Government for other non-banking financial institutions.

11. Submission of reports, etc. (1) A leasing company shall submit such periodical reports to the Authority in the manner and form to be prescribed by it from time to time or in any specific case or on any particular occasion and shall comply with such directions as the Authority may give in writing.

(2) The Authority shall monitor the general financial health of the company, and, at his discretion, may order special audit and appoint an auditor to carry out detail scrutiny of the affairs of the company, or appoint both an auditor and an inspector, provided that the Authority, may, during the pendency of the scrutiny pass such interim orders and directions for the due completion of the scrutiny as may be deemed appropriate by it.

(3) On receipt of the special audit report or report from the Inspector, the Authority may direct the company to do or to abstain from doing certain things and issue directives for immediate compliance which shall forthwith be complied.

12. Rate of mark up and fees. A leasing company may charge mark up rate on its loans in accordance with the prevailing rates provided that disbursement of loans, is held up by the company for any reasons and the commitment fee charged shall not exceed one percent of the un-disbursed balance.

13. Insurance coverage. A leasing company shall--

- (a) obtain sufficient insurance coverage on its own or on its client's benefit against any losses that may be incurred as a result of employees' fraud or gross negligence; and
- (b) ensure that properties being financed by it are covered by adequate fire and causality insurance.

14. Bar to certain transactions. No leasing company shall--

- (a) grant a loan to any employee, officer, director or a shareholder having a beneficial ownership including that of close relatives of more than ten percent in the paid up capital of the leasing company whether directly or indirectly (through their close relatives, companies controlled by them, affiliates, subsidiaries, or by way of acting in concert with others);
- (b) transfer ownership of controlling shares, merge with, acquire or take over any other leasing company unless it has obtained the prior approval of the Authority in writing to the scheme of such merger, acquisition or take over; or
- (c) employ as a broker, directly or indirectly any of its directors, officers, or employees, or a person who beneficially owns, whether individually or in association with close relatives more than ten per cent either of the equity or other securities with voting rights, if any, issued by the leasing company.

15. Penalties. (1) Whoever fails or refuses to comply with, or contravenes any provision of these rules, or knowingly and wilfully authorises or permits such failure, refusal or contravention shall, in addition to any other liability under the Ordinance, be also punishable with fine not exceeding two thousand rupees, and, in case of continuing failure refusal or contravention, to a further fine not exceeding one hundred rupees for every day after the first during which such contravention continues.

(2) Without prejudice to an action and punishment under sub-rule (1), in case of contravention of any provision of these rules, the Authority may cancel the licence of the leasing company after issuing a show cause notice and giving such

company an opportunity of being heard or pass another order deemed appropriate by the Authority.

(3) Upon cancellation of the licence, the functions and carrying on the business of leasing company shall cease and the Authority may move the Court for a winding up order in respect of the company.

FORM I

[See rule 4 (1)]

APPLICATION FOR PERMISSION TO FORM A LEASING COMPANY

Dated.....199

To

The Corporate Law Authority,

Islamabad.

Dear Sir,

We hereby apply for grant of permission under rule 3 of the Leasing Companies (Establishment and Regulation) Rules, 1995, to form a leasing company under the name and style of.....

The information and documents as required in the Annexure to this form duly verified and signed by all promoters/proposed directors alongwith five spare copies of this application and an affidavit by them as to the correctness of the details, is submitted. We undertake to keep this information upto date by communicating changes/modifications therein within fourteen days of such changes/modifications.

A receipt of Rs.being the processing fee, deposited in..... on..... is enclosed.

Yours faithfully,

Verification by

Oath Commissioner.

ANNEX

[See rule 4 (1)]

**INFORMATION TO BE SUPPLIED FOR OBTAINING PERMISSION TO
FORM A LEASING COMPANY**

1. Full name, former name if any, father's/husbands's name, nationality, residential and business address, national tax number, present occupation of each sponsor, proposed director, proposed Chief Executive and proposed Chairman of the Board. (Institutional sponsors shall mention their names only instead of giving all these particulars of their nominee directors).
2. Name of companies, firms and other organizations of which the aforesaid sponsors, proposed Chief Executive and proposed Chairman are or have been directors, partners or office holders during the last ten years. Copies of annual accounts of such companies and firms for the last three years alongwith summary of their paid-up capital, free reserves, profit after tax and dividend payment to be provided.
3. Financial standing, educational as well as professional qualifications and experience of persons mentioned in paragraph 1 above, supported by documentary evidence.
4. Percentage of capital each sponsor proposes to contribute in the proposed company.
5. Feasibility report of the proposed company.
6. Evidence of payment of income tax and wealth tax by the sponsors in individual capacity as well as by the companies, firms, etc., wherein they are or have been directors during the preceding five years.
7. Net-worth certificate of each sponsor supported by a duly authenticated copy of the latest wealth statement filed with the taxation department. In the case of sponsors/directors residing in countries where filing of wealth statement is not the requirement of law, a certificate of personal networth and general reputation issued by a bank of international repute shall be acceptable.
8. Names of the bankers of the sponsors alongwith their account numbers.
9. Draft of the Memorandum and Articles of Association.
10. Affidavit from each person mentioned in paragraph 1 above, stating that--
 - (i) he has not been associated with any illegal banking business, deposit taking and financial dealings;

- (ii) he or companies in which he is a director or has a financial interest have no over-due loans or instalments outstanding towards banks and other financial institutions;
- (iii) he has not got any loans re-scheduled which involved write off;
- (iv) neither he nor companies in which he is a director and has a financial interest, have any case pending or decided for default of taxes as on the date of application;
- (v) he has not been sponsor, director or a financial interest holder, major shareholder or Chief Executive of a defaulting cooperative finance society or defaulting finance company;
- (vi) he has never been convicted of fraud or breach of trust or of an offense involving moral turpitude or removed from service;
- (vii) he has neither been adjudged an insolvent nor has suspended payment or defaulted in making payments, or has compounded with his creditors;
- (viii) he being proposed nominee director, is not already director in any other leasing company, bank or financial institution (strike off, if not applicable);
- (ix) his net-worth is not less than the amount to be subscribed by him personally.

FORM II

[See rule 5 (2) (a)]

APPLICATION FORM FOR LICENCE TO OPERATE AS A LEASING COMPANY

Dated, the.....

To,

The Corporate Law Authority,

.....

Islamabad.

Dear Sir,

We hereby apply for grant of licence under rule 4 of the Leasing Companies (Establishment and Regulation) Rules, 1995, to operate as a leasing company.

2. We hereby furnish the following information:--

(a) Date of incorporation as a limited company.

- (b) Authorized, subscribed and paid up capital of the company (sponsors equity indicated separately).
- (c) Names and addresses of directors. Number of shares held by each of them.
- (d) Director's interest, direct or indirect, in any other company(ies) with details of such interest.
- (e) Details of persons or group controlling the company including of those persons who own ten per cent or more shares with number and value of shares held.
- (f) Name(s) of holding, subsidiary and associated undertaking(s), if any.
- (g) Details of qualified staff engaged.
- (h) Reasons for selecting the proposed place of business with statistical data.
- (i) Additional facts in support of this application.

3. Certified copies of the Memorandum and Articles of Association and Certificate of Incorporation are enclosed.

4. An affidavit as to the correctness of the above information by the Chief Executive and two directors is also furnished herewith. We undertake to keep this information upto date by communicating changes/modifications therein within fourteen days of such changes/modifications.

Yours faithfully,

Signature _____

(To be signed by all the directors)

FORM III

[See rule 5 (3)]

GOVERNMENT OF PAKISTAN

CORPORATE LAW AUTHORITY

Registration No. _____, Islamabad, Dated the _____ 199

LICENCE TO CARRY ON THE BUSINESS OF A LEASING COMPANY

The Corporate Law Authority having considered the application for grant of licence under rule 5 of the Leasing Companies (Establishment and Regulation) Rules, 1995 by _____ and being satisfied that the said _____ is eligible for the licence hereby grants, in exercise of the powers conferred by sub-rule (3) of rule 5 of the Leasing Companies

(Establishment and Regulation) Rules, 1995, licence to *
subject to the conditions stated herein below or as may be prescribed or imposed
hereafter.

.....
Signature of the Officer

.....
*Name of the Company

[See Gazette of Pakistan, Part II Extraordinary, Nov. 16, 1995 for table
at Pp. 2606-2607]

EMPLOYEES' PROVIDENT FUND (INVESTMENT IN LISTED SECURITIES) RULES, 1996

[The Gazette of Pakistan, Extraordinary, Part II, Feb. 26, 1996]

S.R.O. 141 (I)/96. In exercise of the powers conferred by section 227 read with section 506 of the Companies Ordinance, 1984 (XLVII of 1984), and Finance Division's Notification No. S.R.O. 698 (I)/86, dated the 2nd July, 1986, the Corporate Law Authority is pleased to make the following rules, the same having been previously published as required by proviso to sub-section (1) of section 506, namely:--

1. **Short title and commencement.** (1) These rules may be called the Employees' Provident Fund (Investment in Listed Securities) Rules, 1996.

(2) They shall come into force at once.

2. **Interpretation.** In these rules the words and expressions used shall have the same meanings as are assigned to them in the Companies Ordinance, 1984 (XLVII of 1984).

3. **Conditions for investment in listed securities, etc.** Where it is decided to make investment, out of the provident fund constituted for the employees of a company, in securities of the companies listed on any stock exchange in Pakistan, such investment shall be subject to the following conditions, namely:--

- (i) Total investment in listed securities shall not exceed ten per cent of the provident fund;
- (ii) investment shall not exceed on per cent of the provident fund in the listed securities of any one company;
- (iii) investment in shares or other listed securities of a particular company shall not exceed five per cent of its paid up capital;
- (iv) In the case of investment in the shares of listed companies, it shall be made only where such companies--
 - (a) have a minimum operational record of five years; and
 - (b) have paid not less than fifteen per cent dividend to their share holders during the three preceding consecutive years;
- (v) in the case of investment in securities other than shares of listed companies, it shall not be made unless such securities have been rated as an investment grade with minimum rating of "BBB" by a credit rating company registered with the Authority under the Securities and Exchange Ordinance, 1969 (XVII of 1969), and the rating is maintained as such at the time of investment; and

- (vi) Investment shall not be made in a security if it is publicly known that the issuer of the security has committed default while availing of any financing facility.

4. Powers of Authority to relax rules. Where the Authority is satisfied that it is not practicable to comply with any condition of these rules in a particular case or class of cases, the Authority may, for reasons to be recorded and subject to such conditions as it may deem fit, relax any of the conditions specified in rule 3 in the case of such company or class of companies.

5. Penalty. Whoever fails or refuses to comply with or contravenes any provision of these rules, or knowingly and wilfully authorises or permits such failure, refusal or contravention shall, in addition to any other liability under the ordinance, be also punishable with fine not exceeding two thousand rupees, and, in case of continuing failure, refusal or contravention to a further fine not exceeding one hundred rupees for every day after the first during which such contravention continues.

FEDERAL EDUCATION FEE

Federal Education Fee. (1) There shall be levied and collected Federal Education Fee from every company as defined in the Companies Ordinance, 1984 (XLVII of 1984) whose fixed assets as shown in its balance sheet made on or after the thirtieth day of June, 1992 are valued at more than fifty million rupees at such rates and in such manner and from such date as may be specified in a scheme notified by the Federal Government in the official Gazette.

(2) No fee under subsection (1) shall be payable by a company specified in column (1) of the table below, if it has set up or sets up, manages and runs educational institution specified in column (2) of that table within such period as may be notified in the scheme referred to in subsection (1).

TABLE

Type of Company	Educational institution
(a) Where the value of all fixed assets is more than Rs. 50 million but not more than Rs. 100 million.	Middle School
(b) Where the value of all fixed assets is more than Rs. 100 million but not more than Rs. 250 million.	High School
(c) Where the value of all fixed assets is more than Rs. 250 million.	Technical Education School

(3) The Federal Government may, by notification in the official Gazette make rules for carrying out the purposes of this section.

FEDERAL EDUCATION FEE SCHEME

[The Gazette of Pakistan, Extraordinary, Part II, February 18, 1993]

NOTIFICATION

S.R.O. 139(I)/93. In accordance with the provision of section 15 of Finance Act, 1992 (VII of 1992), the details of Federal Education Fee Scheme are specified as under:-

1. Applicability of the Scheme. The Scheme shall be applicable to every company, as defined in the Companies Ordinance, 1984 (XLVII of 1984) whose fixed assets as per its balance sheet, drawn on or after the 30th June, 1993, exceed rupees fifty million.

2. Rate of Federal Education Fee. Federal Education Fee shall be payable by companies as per the following Schedule for a period of three years, in equal yearly instalments.

SCHEDULE

(Rs. in million)

Sr. No.	Value of Assets	Fee	
		Yearly Instalment	Total for 3 years
1.	More than Rs. 50 million but not more than Rs. 100 million.	0.50	1.5
2.	More than Rs. 100 million but not more than Rs. 250 million.	1.00	3.00
3.	More than Rs. 250 million.	2.00	6.00

After three years FEE shall be payable on an annual basis at the rates specified in rules depending upon the expenditure involved in running the schools as prevalent at that time.

3. Companies not required to pay FEE. A company shall not be liable to pay Federal Education Fee:-

- (i) If it has already set up and is managing or running a middle, high or technical school, in accordance with the conditions laid down in sub-section (2) of Section 15 of the Finance Act, 1992;

(ii) if it sets up and manages and runs such a school by 1st March, 1995.

Provided that intimation to that effect is given by the company to the Federal Education Authority and the Income Tax Officer concerned by 31st March, 1993.

4. Specifications of Schools. Following shall be the specifications for the educational institutions for the purposes of the Scheme:

A. Middle School

It shall have:

- (i) Classes I to VIII;
- (ii) Teaching and Non-teaching staff as per Annex-I.
- (iii) Equipment and Furniture as per Annex-II.
- (iv) A permanent physical structure as per details at Annex-III.

B. High School

It shall have:

- (i) Classes I to X
- (ii) Teaching and Non-teaching staff as per Annex-IV.
- (iii) Equipment and Furniture as per Annex-V.
- (iv) A permanent physical structure as per details at Annex-VI.

C. Technical School

It shall have:

- (i) Classes VI to X
- (ii) Teaching and Non-teaching staff as per Annex-VII.
- (iii) Equipment and Furniture as per Annex-VIII.
- (iv) A permanent physical structure as per details at Annex-IX.

5. Change in Option for Setting up/running of School. (1) If a company paying FEE intends to set up a specified school or if a company which has set up and/or is running the specified school intends to change its option, it may so intimate to that effect to the Secretary, Ministry of Education and the concerned Income Tax Officer.

(2) Where any such intimation is received the Federal Education Authority shall consider it and after giving the company an opportunity of being heard shall pass such order on the application as it deem fit.

(3) In case the Federal Education Authority accepts the option, from such date and on such conditions as the Authority may decide the option will become operative.

6. Collection of Fee. (1) The Principal Officer of the company will assess FEE on the basis of the fixed assets of the company as depicted in its balance sheet and deposit the same through a Federal Education Fee challan form in the State Bank of Pakistan/National Bank of Pakistan/Federal Treasury under a separate head indicated on the challan form.

(2) First instalment of FEE will be deposited by the company latest by 31st March, 1993, followed by subsequent instalments by 15th September of each calendar year.

(3) Collection of the fees shall be administered by the Income Tax Department who will be the collecting authority.

(4) In matter of recovery, the provision of Income Tax Ordinance, 1979 and rules made thereunder shall apply *mutatis mutandis* to the sums payable under the Federal Education Fee Scheme and all actions shall be taken for their recovery by the Income Tax authorities accordingly.

7. Utilization of the Fees. (1) The FEE so collected shall vest in a "Federal Education Authority" and shall be used exclusively for the establishment/management of schools specified in the Scheme and matters concerned therewith.

(2) The Authority, *inter alia*, shall undertake the following functions:

- (i) Earmarking of funds amongst the provinces on the basis of population.
- (ii) Approving the proposals of the provinces for establishing institutions at various sites/locations. Preference will be given to the sites/localities in the vicinity of company's undertakings.
- (iii) Release of funds will commensurate with the progress of Projects.
- (iv) Monitoring of the working of the schools through inspection/visits.
- (v) Approval of any changes in the status/condition of such schools.

8. Federal Education Authority. The Federal Education Authority shall comprise of the following:-

- Federal Secretary Education.....Chairman
- Provincial Education Secretaries.....Members
- A representative of Ministry of Finance.....Member
- A representative of C.B.R.....Member
- Joint Educational Adviser (PNE)
- Ministry of Education.....Member/Secretary

9. Policy of Admission. In matters of admission to such schools preference will be given to the children of employees/workers of the relevant company. Merit will be the policy and no discrimination whatsoever shall be practised.

10. Management of Schools. (i) The Schools will be managed by the respective Provincial Education Department.

(ii) Construction of Schools, appointment of teachers, supervision and overall management of the educational institutions will be the responsibility of the Provincial Education Department.

(iii) Provincial Education Department will get the school recognized with the respective Department and Examination Board in the Province.

11. Refund. No refund shall be granted for any Fees paid under these rules.

12. Bankruptcy. If a company becomes bankrupt, the educational Institutions set up and run by the company will be taken over by the respective Provincial Governments.

13. Appeal and Revision. Any company may appeal against any decision of collecting authority to the Inspecting Assistant Commissioner of Income Tax as specified under Income Tax Ordinance, 1979 who may dispose of the appeal after giving the appellant an opportunity of being heard.

FEDERAL EDUCATION FEE RULES, 1992

[Gazette of Pakistan, Extraordinary, Part II, February 18, 1993]

1. Short title and commencements. (1) These rules may be called Federal Education Fee Rules, 1992.

(2) These shall come into force on 1st day of July, 1992.

(3) The Rules extend to the whole of Pakistan.

2. Definitions. (i) "Company" means company as defined in the Companies Ordinance, 1984 (XLVII of 1984).

(ii) "Ordinance" means the Income Tax Ordinance, 1979 (XXXI of 1979).

(iii) "Fee" means the Federal Education Fee.

(iv) "Principal Officer" means Principal Officer of a company as defined in Income Tax Ordinance, 1979.

(v) "Federal Education Fee Return Form" means the form as prescribed by the Ministry of Education Annex.

(vi) "Fixed asset" means an asset on which depreciation is allowable in accordance with the third schedule to the Income Tax Ordinance, 1979. It would also include the fixed investments of the company over and above a period of three years.

(vii) "Middle School" means an Educational Institution as per specification given in the Fee Scheme having classes I-VIII for formal schooling in a permanent physical structure, having both teaching and non-teaching staff, equipment, teaching aids, library books/Instructional material and also furniture required for its operation.

(viii) "High School" means an educational institution having classes from I-X for formal schooling in a permanent physical structure, having both teaching and non-teaching staff, equipment, teaching aids, library books/Instructional material and also furniture required for its operation.

(ix) "Technical school" means a school having classes VI-X in technical and vocational subjects within a permanent physical structure. Technical school should have both teaching and non-teaching staff, equipment/tools, instructional material, Library Books, Teaching aids and also furniture for its operation.

3. Valuation of Fixed Assets. (1) The fixed assets shall be valued at their written down value adopted for purpose of Income Tax Ordinance, 1979.

2. The value of investments shall be taken as shown in the balance sheet.

4. **Challan form.** The company shall deposit the fee on a challan form as per specimen annexed.

5. **Meeting of Federal Education Authority.** Federal Education Authority will meet once in a year. The quorum of the meeting will require the presence of $\frac{2}{3}$ members of the Authority. The Federal Education Authority will review annually the fee collections and its utilization. Federal Education Authority will also approve the annual accounts indicating the Fee receipts and expenditures.

6. **Report of Federal Education Authority.** The Federal Education Authority will publish an annual report on different aspects of Federal Education Fee.

[See Gazette of Pakistan, Extraordinary, Part II, February 1993, pages 189 to 219, for Annexures]

DATES OF ENFORCEMENT OF PROVISIONS

The Corporate Law Authority has reminded all concerned that at the time of promulgation of the Companies Ordinance, 1984, in October, 1984, it was indicated that enforcement of the provisions of the Ordinance would be phased out in order to provide time to the constituents of the corporate sector to switch over the new systems, procedures and requirements in a smooth manner.

Accordingly, the dates of enforcement of various provisions of the said Ordinance were notified by the Federal Government from time to time and the latest position in this regard is as follows:

<i>Provisions</i>	<i>Date of Enforcement</i>	<i>Notification</i>
Section 1	8-10-1984	Section 1 (3)
Sections 2, 11, 12, 13, 438 and 506	1-11-1984	S.R.O. 941(I)/84 dated 31-10-1984.
All provisions other than those of sections 41, 88, 203, 226, 295 to 437, and 443 to 449.	1-1-1985	S.R.O. 1098(I) /84 dated 13-12-1984
Sections 297 to 437 and 443 to 449	1-7-1985	S.R.O. 344(I)/85 dated 14-4-1985.
Sections 41 and 226	1-1-1986	S.R.O. 344(I)/85 dated 14-4-1985
Section 88	22-9-1987	S.R.O. 767(I)/87 dated 22-9-1987

There now remain Sections 203, 295 and 296 whose enforcement dates are yet to be notified by the Federal Government.
