

# The Banking Act 2009

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## **A BILL**

### **An Act to repeal, and with certain modification to consolidate and re-enact the Banking Companies Ordinance, 1962**

WHEREAS, it is expedient to promote safety and soundness of banking sector to maintain financial stability and confidence in the economic system through improved regulation and supervision of deposit taking institutions;

AND WHEREAS, it is expedient to repeal the Banking Companies Ordinance, 1962 (LVII of 1962) and enact the following for the purposes provided hereinafter and matters ancillary thereto;

It is hereby enacted as follows:-

#### **PRELIMINARY**

##### **1. Short title, extent and commencement.—**

(1) This Act may be called as the Banking Act, 2008 which shall come into force on such date as the Federal Government may by notification in the official Gazette specify.

(2) Without prejudice to sub-Section (1), the Federal Government may on the recommendation of the State Bank, declare different dates for the coming into force of –

- (a) different provisions of this Act; or
- (b) all or different provisions of this Act in respect of different classes or categories of persons or institutions.
- (3) This Act shall extend to the whole of Pakistan.

##### **2. Definitions. —**

(1) In this Act, unless the context otherwise requires -

- (a) “acting in concert” means acting pursuant to an agreement, arrangement or understanding, whether formal or informal, to actively co-operate in holding voting shares of a company and includes the person when acting as ;
  - (i) an individual and his family members;

- (ii) a company and its associated companies or associated undertakings; and
  - (iii) a cooperative society and its subsidiaries, and associated companies and associated undertakings of such subsidiaries.
- (b) “approved securities” means such securities as the State Bank may specify in the regulations to be approved securities;
- (c) “associated company” or “associated undertaking” has the same meaning as assigned thereto under the Companies Ordinance, 1984 (XLVII of 1984);
- (d) “bank” means a company (whether incorporated in Pakistan or outside Pakistan) which is licensed to carry on banking business in Pakistan under Section 14;
- (e) “banking business” means the business of accepting or receiving money on current account, deposit account or other similar account, paying and collecting cheques drawn by or paid in by customers, for the purpose of providing finance, making investment and includes such other business as the State Bank may prescribe;
- (f) “banking group” means-
- (i) a group consisting of a bank or an entity specified in Section 3 and a company or companies controlled by such bank or entity;
  - (ii) a group consisting of a bank or an entity specified in Section 3 and one or more companies or institutions engaged in the business of financial services which are under common control and a company or companies controlled by them.
- (g) “Board of Directors” means the Board of Directors of a bank as referred to under Section 38;
- (h) “branch” or “branch office”, in relation to a bank, includes the principal place of business, a branch, an agency, a mobile place of business, a place of business set up and maintained for a limited period only, and electronic terminal where any of the forms of business provided under schedule I is transacted and any other place of business as may be specified by the State Bank in regulations made by it;
- (i) “chief executive” in relation to a bank, means an individual, who is appointed with the prior approval of State Bank and subject to the control and directions of the board is entrusted with the management of the affairs of the bank and includes a director or any other person occupying the position of a chief executive, by whatever name called, and whether under a contract of service or otherwise;

- (j) “company” means any company which may be registered or wound up under the Companies Ordinance, 1984.;
- (k) “contingent liability” means present or future liability whose occurrence is not certain including guarantees, letters of credit, underwriting commitments and any other liability prescribed by the State Bank;
- (l) “contravene” includes failure to comply with;
- (m) “control”, in relation to a company or undertaking, means the power to directly or indirectly exercise a significant influence over the management, business, financial operations or the policies of the company or undertaking, and in relation to shares, means the power to exercise directly or indirectly the voting power or a controlling interest over the voting power, attached to such shares;
- (n) “controller” means a person or group of related or associated persons acting in concert that are in a position to control or exert significant influence over the business or financial operations of a bank or an entity that is licensed or supervised by the State Bank except the Federal or a Provincial Government acting or contemplating to act as controller
- (o) “cooperative” or “cooperative society” means a cooperative society registered under any law applicable in Pakistan relating to the registration of cooperative societies;
- (p) “corporation” has the same meaning as in the Companies Ordinance, 1984;
- (q) “credit facility” includes –
- (i) the giving of any advance, loan, finance, or other facility in whatever form or by whatever name called by a bank whereby a customer of the bank has access to funds or financial guarantees;
  - (ii) liabilities incurred by a bank on behalf of a customer;
  - (iii) modes of financing compliant with Shariah principles; or
  - (iv) any other dealing or transaction as may be specified by regulations made by the State Bank;
- (r) “creditor” includes any person from whom deposits have been received and a bank from which credit facility has been received;
- (s) “debtor” includes any person who is obligated or liable to pay a claim or demand, which is due or may become due;

- (t) “demand liabilities” means liabilities which must be met on demand;
- (u) “deposit” means a sum of money paid on terms under which it is to be repaid, either wholly or in part, with or without any consideration, either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it, and in any other circumstances as may be specified by the State Bank in regulations made by it , but does not include money paid bona fide -
  - (i) by way of advance or part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services is not or are not in fact sold, hired or otherwise provided;
  - (ii) by way of security for the performance of a contract or by way of security in respect of loss that may result from the non-performance of the contract;
  - (iii) by way of security for the delivery of or return of any property whether in a particular state of repair or otherwise; and
  - (iv) in such other circumstances as may be specified by the State Bank in regulations made by it;
- (v) “depositor” means a person who is entitled to repayment of a deposit, whether made by him or any other person;
- (w) "director, in relation to a bank has the same meaning as assigned thereto under the Companies Ordinance, 1984
- (x) “document” includes:
  - (i) any matter or information expressed or described on any substance or material by means of letters, figures, marks or another representation in electronic or any other form; and
  - (ii) any visual recording (whether of still or moving images), any sound recording, or any electronic, magnetic, mechanical or other recording whatsoever, and howsoever made;

- (y) “domestic bank” means any body corporate or company incorporated under the Companies Ordinance, 1984 or any other enactment, that is licensed under Section 14 to carry on banking business;
- (z) “enterprise” means any company, firm, partnership or body corporate;
- (za) “family member” in relation to a person means his spouse, dependent lineal ascendants and descendants and dependant brothers and sisters;
- (zb) “finance” includes —
  - (i) an accommodation or facility provided on the basis of participation in profit and loss, mark-up or mark-down in price, hire-purchase, equity support, lease, rent-sharing, licensing charge or fee of any kind, purchase and sale of any property including commodities, patents, designs, trade marks and copy-rights, bills of exchange, promissory notes or other instruments with or without buy-back arrangement by a seller, participation term certificate, musharaka, murabaha, musawama, istisnah or modaraba certificate, term finance certificate or Sukuk or financing under other Islamic modes of financing recognized by State Bank;
  - (ii) facility of credit or charge cards;
  - (iii) facility of guarantees, indemnities, letters of credit or any other financial engagement which a financial institution may give, issue or undertake on behalf of a customer, with a corresponding obligation by the customer to the financial institution;
  - (iv) a loan, advance, cash credit, overdraft, packing credit, a bill discounted and purchased or any other financial accommodation provided by a financial institution to a customer;
  - (v) any amount due from a customer to a financial institution under a decree passed by a Civil Court or an award given by an arbitrator;
  - (vi) any amount due from a customer to a financial institution which is the subject matter of any pending suit, appeal or revision before any Court;
  - (vii) any other facility availed by a customer from a financial institution.
- (zc) "financial institution" means and includes —
  - (i) any company whether incorporated within or outside Pakistan which transacts the business of banking or any associated or ancillary business in Pakistan through its branches within or outside Pakistan and includes a government savings bank, but excludes the State Bank of Pakistan;
  - (ii) a modaraba or modaraba management company, leasing company, investment bank, venture capital company, financing company,

- unit trust or mutual fund of any kind and credit or investment institution, corporation or company; and
- (iii) any company authorised by law to carry on any similar business, as the Federal Government may by notification in the official Gazette, specify;
- (zd) “financial services”: means:
- i. Banking and other forms of business as provided in schedule I
  - ii. Development Finance
  - iii. Leasing
  - iv. Foreign Exchange business and money transmission services
  - v. Modaraba
  - vi. Brokerage business, securities trading
  - vii. Trading in money market instruments, foreign exchange, financial futures and options, and exchange and interest rate instruments
  - viii. Mutual fund, Pension fund, Venture Capital, and other services offered by Asset Management Companies
  - ix. Real Estate Investment under REITs
  - x. Discounting services
  - xi. Portfolio management and financial advisory
  - xii. Consultation and advice on capital structure, business strategy, and mergers & acquisitions.
  - xiii. Micro Finance,
  - xiv. Insurance of all kinds, and
  - xv. Any other form of service that may be deemed and notified as financial service by State Bank
- (ze) “foreign bank” means a body incorporated outside Pakistan which is licensed under Section 14 to carry on banking business through a branch in Pakistan;
- (zf) “function” includes power and duty;
- (zg) “functional supervisor” means the primary regulatory body of a person in respect of its undertaking under relevant laws for the time being in force.
- (zh) “holding company” has the same meaning as in Section 3 of the Companies Ordinance, 1984;
- (zi) “individual” means a natural person;
- (zj) “lead supervisor” for the purpose of consolidated supervision, State Bank of Pakistan shall be the lead supervisor in respect of banking groups, and non-operating bank holding companies and controllers thereof.

- (zk) “liabilities” includes dues, duties and obligations of every kind, whether present or future or whether vested or contingent;
- (zl) “liquid assets” means assets which are readily convertible into cash and includes-
- (i) cash;
  - (ii) gold and bullion
  - (iii) balances with banks;
  - (iv) money at call in Pakistan;
  - (v) treasury bills, Sukuk and securities issued and guaranteed by the Federal Government;
  - (vi) certificates of investment, Sukuk or securities of institutions that meet the credit quality specified by the State Bank; and
  - (vii) such other assets or class or categories of assets as may be specified in regulations made by the State Bank from time to time;
- (zm) “manager”, in relation to an institution, means an officer of the institution by whatever name called, responsible for an office of the institution, or for a department or division of such institution;
- (zn) “non-operating bank holding company” means a holding company authorised by the State Bank the principal function of which is to act as an owner or controller of a bank or an entity specified in Section 3 and which:
- (i) does not carry on a business other than a business consisting of the ownership or control of other companies engaged in financial services; and
  - (ii) is incorporated in Pakistan.
- (zo) “officer”, in relation to a bank, includes–
- (a) the chief executive of the bank or his deputies;
  - (b) the chief financial officer of the bank;
  - (c) chief operating officer;
  - (d) the company secretary of the bank;
  - (e) internal auditor;
  - (f) such other individual(s) performing executive functions at the bank;
- and

g) any other individual/s who individually or collectively exercise/s direct or indirect control or influence on the affairs of the bank.

- (zp) “permissible activity” means any activity that is specified in Schedule I;
- (zq) “person” includes a Hindu undivided family, an individual, corporation, statutory body, local authority, society, trade union, co-operative society, partnership and any other body, organization, association or group of persons, whether incorporated or not, and every other juridical person;
- (zr) “premises” includes any place, land, building, structure or equipment;
- (zs) “principal place of business” of a body corporate means the corporate headquarters or principal place of management of the body corporate;
- (zt) “prescribed”, where no mode is mentioned, means prescribed by order in the Gazette or notification or by rules or regulations or otherwise notified under this Act.
- (zu) “Registrar” has the same meaning as in the Companies Ordinance , 1984;
- (zv) “regulations” means any regulations, guidelines, circulars, directions and instructions issued by the State Bank from time to time under this Act;
- (zw) “significant influence” means any person or group of persons, including a foreign bank holding ten per cent or more of the voting shares of a bank or holding company of a bank or any company specified in section 3
- (zx) “share” means share in the share capital of a company;
- (zy) “Shariah” means rulings, modes, regulations and instructions based on Islamic law and jurisprudence which are approved by Shariah Board;
- (zz) “Shariah Board” means Shariah Board of State Bank established under section 29;
- (zza) “specified”, where no mode is mentioned, means specified from time to time in writing, and a power to specify includes the power to specify differently for different persons or different classes, categories or descriptions of persons;
- (zzb) “State Bank” means State Bank of Pakistan established under the State Bank of Pakistan Act, 1956;

- (zzc) “subsidiary” has the same meaning as in the Companies Ordinance, 1984; and
- (zzd) “substantial interest” in a company or an undertaking shall be deemed to be possessed by a person if he or any of his family members is the owner, director or officer of or has control over the company or the undertaking
- (zze) “undertaking” means any concern, institution, establishment or enterprise engaged in the production, supply or distribution of goods, or in the provision or control of any financial or other services.

(2) Any reference in this Act to “this Act” shall, unless otherwise expressly stated, be deemed to include a reference to any subsidiary legislation, rules, orders and regulations.

(3) Where any word or expression is defined in this Act, the definition shall extend to all grammatical variations and cognate expressions of the word or expression so defined.

### **3. Application of the Act on certain entities.**

1. The provisions of sections 4, 5, 6, 38, 39, 41, 42, 43, 45, 47, 50, 54, 63, 64, 65, 72, 76, 78, 90, 95, 96, 174, provisions of part X and Part XI of this Act, with such modifications as the State Bank may determine from time to time shall apply to Development Finance Institutions (DFIs) and such other companies, corporations or institutions or class of companies, corporations or institutions, as the Federal Government on the recommendations of State Bank may, by notification in the official Gazette, specify from time to time.

**Explanation:** For the purpose of this subsection, DFI means the Pak-Libya Holding Company Limited, the Saudi-Pak Industrial and Agricultural Investment Company Limited, the Pak-Oman Investment Company (Pvt) Limited, the Pakistan Kuwait Investment Company Limited, Pak-Brunei Investment Company Limited, Pak-China Investment Company Limited, Pak-Iran Joint Investment Company Limited, and House Building Finance Company Limited and such other company as the Federal Government may, on the recommendations of State Bank, by notification in the official Gazette, specify in this behalf.

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2. The provisions of sections 4, 5, 6, 7, 8, 21, 38, 39, 40, 41, 42, 43, 44, 47, 48, 49, 50, 52, 54, 56, 60, 63, 64, 65, 67, 68, 69, 70, 71, 72, 74, 76, 78, 79, 80, 81, 95, 96, 167, 169, 170, 174, 177, 179, 183, 184, 185, provisions of Part II, IV, X, XI and XIII of this Act, with such modifications as the State Bank may determine from time to time, shall apply in relation to the

activities of Leasing Companies, Investment Finance Companies, and Housing Finance Companies.

3. The provisions of sections 4, 5, 7, 8, 21, 38, 39, 40, 42, 43, 44, 47, 48, 49, 50, 51, 52, 54, 56, 60, 61, 67, 69, 70, 71, 72, 73, 75, 76, 78, 79, 80, 81, 166, 167, 177, 179, 183, 184, 185, provisions of Part II, IV, X, XI and XIII of this Act with such modifications, as the State Bank may determine from time to time, shall apply to non-operating bank holding companies.

**Explanation:** The provisions of sub-section (1), (2) & (3) shall be in addition to the provisions of the Act which are expressly applicable to the entities specified under this section.

#### **4. General powers, functions and duties of State Bank.**

(1) The State Bank shall have the powers, functions and duties conferred on it by this Act.

(2) The State Bank shall have all such powers as may be necessary for or in connection with, or reasonably incidental to, the performance of its functions under this Act including in relation to the maintenance of safety and soundness of the banking and financial system in Pakistan.

(3) Where the State Bank is satisfied that—

(a) in the public interest; or

(b) to prevent the affairs of any bank being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the bank; or

(c) to secure the proper management of any bank generally;

it is necessary to issue directions to banks, generally or to any bank or an entity supervised under section 3, it may, from time to time, issue such directions as it deems fit, and the banks or the bank or the entity concerned, as the case may be, shall be bound to comply with such directions.

(4) State Bank may, from time to time issue direction, guidelines, instructions and call information with respect to activities and operations of banks and the institutions under its regulatory control as may be deemed necessary by it for carrying out purposes and provisions of this Act or anything ancillary to it.

(5) The State Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-section(4), and in so modifying or canceling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect.

**5. This Act to override other laws, constituent documents, memorandum, articles etc.**

- (1) Subject to sub-section (3), the provisions of this Act shall have effect notwithstanding anything contained to the contrary in any other law, constituent documents, memorandum or articles of a bank or in any agreement executed by it, or in any resolution passed in general meeting or by its board of directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and
2. Any provision contained in the constituent documents, memorandum, articles, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.
- (3) Where a bank or an entity specified under section 3 is a company or corporation to which all or any of the provisions of the Companies Ordinance, 1984 apply, such provisions shall be in addition to the provisions of this Act and not in derogation thereof, but where there is any conflict or inconsistency between the provisions of the Companies Ordinance, 1984 and this Act in their respective application to a bank or an entity specified under section (3) , the provisions of this Act shall prevail.

**6. Reports by State Bank to Federal Government.**

The State Bank shall submit an annual report to the Federal Government-

- (a) providing its assessment on the performance of the banking sector in the economy including major trends and developments in the banking system and providing an assessment of the significant risks that may arise in relation to such trends and developments;
- (b) identifying the strategy or strategies adopted by the State Bank in relation to its regulation and supervision of the banking system, with particular reference to its authority under the State Bank of Pakistan Act, 1956; and
- (c) making its recommendations for the strengthening of the banking and financial systems in Pakistan.

**7. Power of State Bank to specify form and manner of keeping or maintaining books, accounts and records.**

(1) Where under any of the provisions of this Act or the State Bank of Pakistan Act, 1956 any person is required, or power is available to the State Bank to require any person, to keep or maintain any book, account or record including software, the State Bank may specify the form, manner and period for which such book, account or record is to be kept or maintained.

(2) The person referred to in sub-section (1) shall take all reasonable precautions, including such precautions as may be specified by the State Bank, to prevent damage to, or destruction or falsification of, such book, account or record.

(3) Where under any provisions of this Act or the State Bank of Pakistan Act, 1956, power is available to the State Bank to inspect and make copies or take extracts from any book, account or record that is required under any of the provisions of this Act or the State Bank of Pakistan Act, 1956 to be kept or maintained, the State Bank shall have access to the book, account or record and may –

- (a) obtain clear reproduction in writing; or
- (b) copy or move it to a storage or recording device.

(4) Where under any of the provisions of this Act or the State Bank of Pakistan Act, 1956, power is given to the State Bank to allow the State Bank to require the production of, take possession of, secure against interference or detain any book, account or record, the State Bank may require the production of, take possession of, secure against interference or detain, any storage or recording device in which the book, account or record is stored or recorded.

(5) For the purposes of this section, the State Bank may require any person involved in the compilation of the book, account or record, or in the storing or recording of the book, account or record in a storage or recording device, to make a statement providing an explanation of how to secure access to the book, account or record.

(6) For the purposes of this section, “book, account or record” include any register, any record of information, accounts or accounting records and a document howsoever compiled, recorded or stored.

**8. Electronic filing of information, documents or returns.**

(1) The State Bank may provide a service for the electronic filing, lodging or submission of information, documents or returns required by any of the provisions of this Act or the State Bank of Pakistan Act, 1956 to be filed, lodged or submitted to the State Bank.

(2) A person who intends to use the service provided under sub-section (1) shall become a subscriber to the service by paying a specified fee, if any, and by complying with such terms and conditions as may be determined by the State Bank.

(3) Any information, document or returns electronically filed, lodged or submitted under this section shall be deemed to have satisfied the requirement for filing, lodgment or submission if the book is communicated or transmitted to the State Bank in such manner as may be specified by the State Bank.

(4) The State Bank may specify the information, documents or returns that may be electronically filed, lodged or submitted.

(5) Any information, document or return that is required to be stamped, signed or sealed shall, if it is to be electronically filed, lodged or submitted, be certified or authenticated in such manner as may be specified by the State Bank.

(6) Where any information, document or return is electronically filed or lodged with or submitted to the State Bank, the State Bank or its authorized agents shall not be liable for any loss or damage suffered by any person by reason of any error or omission, of whatever nature or however arising, appearing in any information, document or return obtained by any person under the service referred to in sub-section (1) if such error or omission was made in good faith and in the ordinary course of the discharge of the duties of the State Bank or its authorized agents or occurred or arose as a result of any defect or breakdown in the service or in the equipment used for the provision of the service.

## **9. Amendment of Schedules.**

The Federal Government shall, on the recommendation of the State Bank, from time to time by order published in the Gazette, vary, delete, add to, substitute for, or otherwise amend Schedule I and Schedule II. Upon such publication, Schedule I and Schedule II as varied, deleted, added to, substituted for or otherwise amended, shall come into full force and effect and shall be deemed to be an integral part of this Act as from the date of such publication, or from such later date as may be specified in the order.

## PART II

### LICENSING OF BANKS

#### **10. Prohibition to carry on banking business without license**

(1) No person shall carry on banking business in Pakistan, or purport to do so, unless such person—

- (a) is a company and holds a valid license issued under Section 14 to carry on banking business;
- (b) is established by a Federal or Provincial law and holds a valid license issued under Section 14 to carry on banking business; and
- (c) is a body incorporated or established outside Pakistan and holds a valid license issued under section 14 to carry on a banking business in Pakistan.

(2) The provisions of sub-section (1) shall not apply to the following:

- (a) the State Bank;
- (b) micro finance institutions licensed under Micro finance Institutions Ordinance, 2001 and any other enactment; and
- (c) any other persons, by virtue of their business or the nature of their financial resources, who are exempt by regulations made by the State Bank under this Act.

(3) Exemptions granted to persons under clause (b) and clause (c) of sub-section (2) may be revoked in whole or in part by the State Bank whenever any of the aforementioned persons –

- (a) has a membership exceeding such number of members as may be prescribed by the State Bank; or
- (b) has total assets or equity exceeding such other amount as may be prescribed by the State Bank; or
- (c) is operating for the sole purpose of avoiding being licensed as a bank under this Act or otherwise subject to the provisions of this Act.

(4) The State Bank shall give written notice to any of the persons referred to in clause (b) or clause (c) of sub-section (2) of its intention to revoke the exemption and the person concerned shall within a period of seven business days from the date of receipt of the notice from the State

Bank, make representations to the State Bank as to why the revocation should not be made.

(5) The State Bank shall inform the Federal Government of any revocation made under sub-section (4).

**11. Provisions in relation to banking licenses.**

(1) The State Bank shall have exclusive authority to issue and cancel banking licenses.

(2) A banking license issued under section 14 shall have effect on such date as the State Bank may specify in the license.

(3) The State Bank may issue a license under section 14 subject to such restrictions, including exclusions of one or more permissible activities specified in Schedule I, or such conditions, as it may consider appropriate.

(4) Every bank shall comply with the conditions or restrictions specified in its license.

(5) Except with the written permission of the State Bank, no bank shall carry on any business—

(a) that is excluded by its license or its constituent documents or memorandum of association; and

(b) that is other than the permissible activities specified in Schedule I.

(6) Every bank shall conspicuously display a copy of its branch license at every place of its business in Pakistan.

**12. Application for a banking license.**

(1) For the purposes of this Part, an “applicant” shall include an existing company or a proposed company for which a banking license is requested.

(2) An applicant shall state in its application a statement detailing its short term and long term business plans including the type of business that it seeks to engage in.

(3) An application for a banking license shall be made in writing to the State Bank in such form and manner and shall be accompanied by such documentation and such other information, as may be specified in regulations made by the State Bank, and the payment of a processing fee of such amount as may be specified by the State Bank.

(4) The State Bank may at any time after receiving an application for a banking license and prior to the issue of a license under this Act, conduct such inquiry or investigations, as it may deem necessary to satisfy itself that none of the grounds in section 14 for the rejection of an application applies, including –

- (a) on-site examination of the applicant;
- (b) financial, criminal and professional checks of the applicant, sponsors who hold or would hold substantial interest in the applicant and directors and officers of the applicant.

(5) For the purposes of clause (b) of sub-section (4), the persons referred to there in shall provide an authorization signed by or on behalf of the persons, authorizing, the State Bank to carry out financial, criminal and professional checks concerning them and permitting banks, the national and local tax collection and other relevant law enforcement authorities, to provide such information to the State Bank as it may require.

(6) The State Bank shall be authorized to carry out the background checks referred to in sub-section (4)

(7) For the purposes of this section, the State Bank may require the applicant to satisfy it on any matter relevant to application and in particular–

- (a) the acceptability and validity of the documents and any other information submitted by the applicant;
- (b) the financial history of the applicant;
- (c) based on the information furnished on behalf of an applicant, the ability of the applicant to raise adequate capital; and
- (d) the ability of the applicant to meet all its obligations and other liabilities incurred in the conduct of banking business in Pakistan and to observe the provisions of this Act.

**13. Requirement for supplemental information relating to an application made under section 12.**

(1) At any time during the application process, the State Bank may, where the State Bank considers it necessary, require the applicant to correct, complete or update information provided to the State Bank or to furnish to the State Bank such supplemental information as may be specified by the State Bank.

(2) In addition to the documents and information required under sub-section (3) of section 12, an application for a license to conduct banking business in Pakistan by a body incorporated established outside Pakistan which is licensed by the bank regulator

of the country of its principal place of business to carry on banking business in that country, shall be accompanied by such other documents and information as may be specified by the State Bank.

(3) The matters specified in sub-section (1) or sub-section (2) may differ as between applicants or different classes, categories or descriptions of applicants and may be waived by the State Bank in individual cases where the State Bank considers it appropriate.

(4) Where any information or document that is required by the State Bank under sub-section (3) of section 12, or sub-section (1) or (2) of this section, is not provided by the applicant within the time specified by the State Bank, the application shall be deemed to be withdrawn as not pressed and shall not be further processed, without prejudice to a fresh application being made by the applicant.

#### **14. Approval or rejection of application.**

(1) The State bank shall have sole authority to issue license under this Act.

(2) No license shall be deemed to be issued under this Act unless expressly approved by the State Bank on such terms and conditions as deemed fit by it.

(3) The State Bank shall reject an application for a banking license if it is satisfied that any of the following circumstances apply:

- (a) one or more of the criteria specified in Section 39 are not or have not been fulfilled or may not be or may not have been fulfilled, in respect of a director, chief executive, manager or a person who holds five per centum or more of the voting shares in an applicant;
- (b) one or more of the requirements specified in section 12 or section 13 are not or have not been fulfilled or may not be or may not have been fulfilled;
- (c) any information contained in the application for a banking license or any information submitted in connection therewith is found to be false, misleading or inaccurate;
- (d) failure of the applicant or any of the persons referred to in clause (b) of sub-section (4) of section 12 to co-operate with the State Bank in relation to an on-site examination or an inquiry or investigation made under section 12;

- (e) the State Bank has determined that the applicant would not or is not in a position to comply with any of the requirements under this Act or any other law in Pakistan;
- (f) the State Bank has determined that there are indications that the influence that would be exercised on the applicant by any person who has a substantial interest in the applicant would threaten the sound and prudent management of the applicant upon it being issued a banking license;
- (g) the internal control and risk management procedures of the applicant would be inadequate;
- (h) the business plan and financial projections for the applicant are inadequate;
- (i) the applicant would be connected to a group of persons where the State Bank has determined that such connection would threaten the sound and prudent management of the applicant or financial stability in the country;
- (j) any other requirement under this Act for the issue of a banking license has not been complied with; or
- (k) the State Bank has determined that current domestic economic or financial conditions in Pakistan warrant the rejection of application for a banking license.

(4) The State Bank shall decide on an application for the license as quickly as possible. However, the time required to process an application will depend on the particular circumstances of each application, including the completeness of information and quality of documents submitted by the applicant. State Bank shall decide on an application not later than ninety days after completion of necessary requirements of application and shall as soon as is reasonably practicable, notify the applicant in writing of its decision whether to issue or refuse a banking license

(5) In case of refusal of application, State Bank may provide a written statement of reasons for the refusal while notifying the applicant under subsection (4)

## **15.**

### **Restrictions and conditions imposed on license.**

The license issued under section 14 shall be conditional to restrictions and conditions imposed under the license and the licensed person shall comply with the provisions of this Act and rules, regulations and instructions issued under it.

**16. Cancellation of license.**

- (1) A banking license shall be cancelled by the State Bank if:
- (a) the license was issued based on information in support of application that was found to be false and misleading subsequent to the issue of the license;
  - (b) the bank has been liquidated and the State Bank has determined that all its obligations have been discharged;
  - (c) all of the assets and liabilities deriving from the banking business of a bank have been vested in another bank;
  - (d) a bank requests for its liquidation and where the State Bank is satisfied that all the deposit liabilities and liabilities imposed under this Act have been duly met; and
  - (e) the license of the principal place of business of a foreign bank has been cancelled by the bank regulator of the country of its principal place of business.

(2) Where a banking license has been cancelled under subsection (1), the State Bank shall, as soon as possible-

- (a) remove the name of the bank from the list of banks; and
- (b) issue a notice of the cancellation and shall publish in at least two major newspapers circulating in Pakistan.

(3) A banking license may be cancelled by the State Bank if the bank has failed to commence banking business within six months of the issue of the license or has failed to continue its business for any period exceeding six months.

(4) Before a banking license is cancelled under sub-section (3), a notice of the proposed cancellation shall be served by the State Bank on the bank concerned specifying the reasons for the proposed cancellation and inviting the bank to a hearing on a date specified in the notice.

(5) After considering any representations made under sub-section (4), the State Bank may cancel the license or allow an extension of time for the bank to commence or carry on its banking business.

**17. Publication of list of banks.**

(1) The State Bank shall cause to be published not later than the 31<sup>st</sup> March in each year a list, in such form as may be determined by the State Bank, of all banks.

(2) If any license is issued at any interval between one publication and the next following publication under sub-section (1), the State Bank shall cause to be published a notification thereof as soon as may be practicable.

**18. Annual license fees.**

(1) Every bank shall pay to the State Bank such annual license fee as may be prescribed by the State Bank by order published in the regulations.

(2) The license fees prescribed by the State Bank may differ in respect of various banks on the basis of their class, category, nature, size and location of the branches.

## **PART III**

### **BUSINESS OF BANKS**

#### **19. Forms of business which banks may engage in.**

(1) In addition to banking business, a bank may engage in one or more of the permissible activities specified in Schedule I.

(2) No bank shall carry on any business other than banking business and the permissible activities specified in Schedule I, subject to the provisions of its memorandum of association or its articles of association and subject to the conditions and restrictions imposed on its license or imposed by or under this Act.

#### **20. Prohibition of the words “bank”, “banking”, “banker”, “Islamic bank”, or any of their derivatives.**

(1) No person, not being a bank, shall assume or use the words “bank”, “banker”, “banking”, “Islamic bank”, as the case may be, or any derivatives of these words in any language, or any other words in any language capable of being construed as indicating carrying on of such business, in relation to the business or any part of the business carried on by such person, or make representation to such effect in any bill, letter, notice, advertisement, or in any other manner whatsoever.

(2) Sub-section (1) shall not apply to the following:

- (a) an association of banks duly recognized by the State Bank;
- (b) a subsidiary of a bank formed for one or more of the purposes specified in section 61 whose name suggests that it is a subsidiary of that bank;
- (c) an institution with respect to which such usage is established or recognized by law or international agreement;
- (d) any other person as may be authorized in writing by the State Bank subject to such terms and conditions specified by the State Bank.

(3) No bank shall carry on banking business in Pakistan unless it uses as part of its name at least one of the words referred to in sub-section (1):

Provided that a foreign bank and each of its branches that does not have any of the words referred to in sub-section (1) in any language in its name may carry on banking business in Pakistan notwithstanding the omission of these words in its name.

(4) A bank that uses or assumes the words “Islamic” or “Islamic bank”, or any derivatives of these words in any language, or holds itself out as to carry on banking business in conformity with the principles of Shariah, shall fully comply with the provisions of Part IV and other provisions related to Islamic banking included in this Act.

(5) Any bank that seeks to change its name shall obtain the prior written approval of the State Bank.

**21. Changes in the memorandum or articles of association of banks.**

Every domestic bank shall, prior to making any amendment or alteration to its memorandum or articles of association, furnish to the State Bank particulars in writing of such proposed amendment or alteration for the approval of the State Bank.

**22. Restrictions on carrying on of trade**

(1) Except as may be specifically authorized by the State Bank or as provided under sub-section (2), no bank shall engage, whether on its own account or on a commission basis, and whether alone or with others, in wholesale or retail trade, including export and import trade, except in connection with the realization of security given to it or held by it for the purpose of carrying on its banking business.

(2) The provisions of sub-section (1) shall not apply to the following:

- (a) the purchase or sale of gold or foreign currency by any bank; or
- (b) where the carrying on of trade by the bank, including export and import trade, is in the course of its business that is in conformity with Shariah and that complies with the provisions of Part IV.

(3) A bank that carries on a trade under subsection (2), shall comply with any requirements or criteria as may be specified in the regulations made by the State Bank.

**23. Advertisement for deposits.**

(1) No person, other than a bank and the persons specified in sub-section (2), shall issue or publish or otherwise facilitate any person to issue or publish an advertisement containing –

- (a) an invitation to make a deposit or enter into or offer to enter into any agreement to make a deposit; or
- (b) information which is intended or might reasonably be presumed to be intended to lead directly or indirectly to the making of a deposit.

- (2) The provisions of sub-section (1) shall not apply to the following persons:
- (a) a corporation or authority established by the Federal Government that is allowed to solicit or invite deposits;
  - (b) a company duly authorized by the Securities and Exchange Commission of Pakistan under the Companies Ordinance, 1984 to solicit or invite deposits in ordinary course of business
  - (c) any person who publishes an advertisement for or on behalf of a bank; and
  - (d) any other person as may be authorized by the State Bank.

(3) For the purposes of this section, “advertisement” means the disseminating or conveying of information, invitation or solicitation by any means or in any form, including by means of –

- (a) publication in a newspaper, magazine, journal or other periodical;
- (b) display of posters or notices;
- (c) circulars, handbills, brochures, pamphlets, books or other documents;
- (d) letters addressed to individuals or bodies;
- (e) photographs or cinematograph films;
- (f) sound broadcasting;
- (g) television or other electronic medium or means; and
- (h) the internet or electronic mail.

(4) For the purposes of this section, “deposits” shall be deemed to include money called, invited or collected for the purpose, or declared object, of investment or borrowing in any business carried on, or proposed to be carried on, by the person by whom, or on whose behalf, such money is called, invited, collected or received irrespective of the nature of the relationship, arrangement or terms offered or provided by such person making the investment, deposit or payment on the understanding on which the money is so invited, called, collected or received.

(5) The State Bank may specify the manner, standards and conduct required of banks or any person authorized by it under sub-section (2) in their issue or publication of advertisements for deposits through regulations made by the State Bank.

#### **24. Unauthorized calls for deposits**

- (1) No person except a bank shall, make a call to -
- (a) solicit or procure the making of a deposit; or

- (b) enter into or offer to enter into any agreement with a view to the acceptance of a deposit,

from any person in Pakistan or outside Pakistan.

(2) The State Bank's consent under sub-section (1) may be given to such persons, or such classes or categories or description of persons and be made subject to such terms and conditions, including a condition requiring the disclosure of such information to the persons on whom unsolicited calls are made, as may be set out in the consent.

(3) In this section, "calls" means a personal visit, or oral or other communication made.

## **25. Fraudulent inducement in relation to deposits**

No person shall -

- (a) make, publish, or facilitate the making or publication of a statement, promise, or forecast which in relation to deposits he knows to be misleading, false or deceptive;
- (b) dishonestly conceal any material fact; or
- (c) recklessly make or publish (dishonestly or otherwise), or recklessly facilitate the making or publication (dishonestly or otherwise) of a statement, promise or forecast which is misleading, false or deceptive .

## **26. Co-operation and co-ordination between State Bank and Securities and Exchange Commission of Pakistan**

Where certain activities or business of a bank relates to areas that are regulated by the Securities and Exchange Commission of Pakistan under any law or where an issue arises in relation to the merger, reconstruction or amalgamation of an entity that is regulated by the Securities and Exchange Commission of Pakistan with a bank, there may be established a framework for co-operation to facilitate the exchange of information with due regard to confidentiality of customers information, between the State Bank and the Securities and Exchange Commission of Pakistan - as deemed necessary.

## PART IV

### PROVISIONS IN RELATION TO BANKS CARRYING ON BUSINESS BASED ON SHARIAH PRINCIPLES

#### **27. Requirements for carrying on business that conforms to Shariah principles.**

(1) Subject to provisions of this Act, a bank may carry on Shariah compliant business in the following ways :

- (a) through the establishment of a branch ; or
- (b) through the establishment of a subsidiary; or
- (c) where its entire business and operations do not involve any element which is not approved by Shariah.

(2) A bank which carries on business in any of the ways described in sub-section (1) shall -

- (a) comply with all Shariah regulatory standards and requirements as may be specified in the regulations made by the State Bank;
- (b) appoint a Shariah advisor who meets at all times the fit and proper criteria specified in section 39;
- (c) comply with any other requirements as may be specified in the regulations made by the State Bank.

(3) If a bank proposes to convert its entire business and operations to be in conformity with Shariah principles, the State Bank may specify regulations and requirements for the same.

#### **28. Report of Shariah adviser etc.**

(1) Where a Shariah adviser is appointed by a bank, a report by the Shariah adviser shall accompany the annual audited financial statements of the bank.

(2) The State Bank may specify in the regulations made by it the format and content to be provided in a report referred to in sub-section (1).

## **29. Shariah Board**

(1) The Central Board of Directors (hereinafter referred to as “Central Board”) established under section 9 of the State Bank of Pakistan Act, 1956 may establish a Shariah Board to enable the State Bank to seek views on Shariah matters relating to any business which is based on Shariah principles and is supervised and regulated by the State Bank.

(2) The Shariah Board shall consist of such members as may be appointed by the Central Board from amongst persons who have knowledge or experience, or both, in the Shariah and banking, finance, law or other related discipline.

(3) The members of the Shariah Board shall have such functions as may be determined by the Central Board and shall determine its own procedures.

(4) The members of the Shariah Board shall be paid out of funds of the State Bank such remuneration or allowance as may be determined by the Central Board.

(5) Unless the State Bank otherwise approves in writing, no member of the Shariah Board shall become a Shariah adviser referred to in subsection (2) of section 27, or assume any position or office to such effect for, or occupy any office or employment, whether remunerated or not with, any bank or an entity regulated by State Bank.

(6) The State Bank may establish a secretariat as it considers necessary to assist the Shariah Board in the performance of the functions of the Shariah Board and appoint any of the officers of the State Bank or any other person to be a member of the secretariat.

(7) Any request for consultation or advice of the Shariah Board shall be submitted to the secretariat referred to in sub-section (6).

(8) Where the opinion given by Shariah Advisor of a bank is different from the opinion given by Shariah Board, the determination of State Bank shall be final and all banks shall be bound to comply with it

(9) Any directive, notice, circular or regulation or any act or thing done by the State Bank in relation to banking business which is based on Shariah before the coming into force of this Act is deemed to have been validly issued or done under this Act.

**30. Relationship between a bank and its customers in relation to transactions or arrangements that are in conformity with Shariah principles.**

(1) Notwithstanding the usage of the words “banker”, “customer”, “creditor” or “debtor”, in respect of any transaction or arrangement that is entered into by any bank referred to in sub-section (1) of section 27 with its customers, the relationship between such bank and its customers in respect of such transaction or arrangements shall be determined in accordance with the contractual terms governing such transactions or arrangements and any regulations made by the State Bank.

(2) For the purposes of sub-section (1), the State Bank may specify in the regulations made by it-

- (a) any model agreement or documentation relating to any type of transaction or arrangements referred to in subsection (1);
- (b) the duties and responsibility of the bank referred to in subsection (1) in such type of transaction or arrangements; and
- (c) any other matter as may be deemed appropriate to giving full effect to the principles of Shariah in relation to such type of transactions or arrangements.

(3) The State Bank may specify in the regulations made by it the prohibited type of activities or businesses which are applicable to the operations or business of a bank referred to in sub-section (1) of section 27 and the bank shall not carry on such type of activities or businesses .

**31. Publication of a list of banks which carry on business in any of the ways described in subsection (1) of section 27.**

The State Bank shall cause to be published not later than the 31<sup>st</sup> March in each year, a list of all banks which have been authorized to carry on business in any of the ways described in subsection (1) of section 27.

**32. Tax neutrality of transactions or arrangements which conform to the principles of Shariah.**

Notwithstanding the provisions of any law relating to taxes and duties, the Federal Government may, on the recommendation of the State Bank, prescribe such rules in respect of transactions or arrangements entered into between a bank referred to in sub-section (1) of section 27 and its customers that do not involve any element that is not based on Shariah principles and which complies with the provisions of this Part, for the purposes of ensuring tax neutrality of such transactions or arrangements and any relevant persons involved in such transactions or arrangements.

## PART V

### OWNERSHIP, CONTROL AND MANAGEMENT OF BANKS

#### **33. Prior approval of State Bank for acquisition of substantial interest in a bank.**

- (1) A bank shall obtain the prior approval of the State Bank –
  - (a) for it to acquire the business or a substantial shareholding of the business of another bank or to sell all or a substantial shareholding of its own business;
  - (b) for its amalgamation, consolidation or merger with another bank; and
  - (c) for it to enter into any agreement with another company to carry on for common account any permissible activities specified in Schedule I.
- (2) An application for approval under sub-section (1) shall be accompanied by –
  - (a) a statement of the nature of the transaction and its principal effects on the business of the bank making the application;
  - (b) a copy of the proposed agreement or undertaking, if any, governing the transaction; and
  - (c) such other information and documents as may be specified by the State Bank.

(3) An application made under sub-section (1) shall not be approved if the State Bank determines that such transaction would not be in the interest of promoting a safe, sound and stable banking system in Pakistan, or would threaten the safety or soundness of the bank or banks concerned, or would hinder the State Bank in the performance of its functions and duties.

Explanation: “substantial shareholding” under this part has the same meaning as ascribed to substantial interest.

#### **34. Prior approval of State Bank for acquisition of qualifying holdings in a domestic bank.**

(1) No person shall, alone or in concert with one or more persons, without the prior approval of the State Bank, enter into any agreement or arrangement to acquire qualifying holdings in a domestic bank.

- (2) A person to whom sub-section (1) applies shall –

- (a) submit to the State Bank a written application accompanied by any other supporting documents as may be specified by the State Bank; and
- (b) in the case of an individual, submit to the State Bank an authorization signed by the individual permitting the State Bank to carry out financial, criminal and professional checks concerning him and permitting banks, the national and local tax collection and other relevant law enforcement authorities, to provide such information to the State Bank as it may require.

(3) The State Bank shall be authorized to carry out the background checks referred to in sub-section (2) and may require any additional documents or information in relation to an application made under sub-section (1).

(4) The State Bank shall not grant an approval to an application made under sub-section (1) or sub-section (6) if it determines that one or more of the following circumstances exist:

- (a) the applicant, being an individual, is not a fit and proper person in accordance with Section 39;
- (b) the applicant, being a body corporate, has one or more directors or managers who are not fit and proper persons in accordance with Section 39;
- (c) facts are known to the State Bank to indicate that the person making the acquisition would exercise influence on the bank that would threaten the sound and prudent management of the bank; or
- (d) the acquisition would contravene any other provisions of this Act or regulations made there under.

(5) The State Bank shall have sole discretion to approve or reject any application made under sub-section (2) or sub-section (6).

(6) No person who has obtained an approval of the State Bank under sub-section (1) shall enter into any subsequent agreement or arrangement to acquire any more voting shares in the domestic bank, regardless of the percentage of the shares of the bank represented by such subsequent acquisition, without applying for prior approval of the State Bank.

(7) An application made under sub-section (6) shall be subject to the requirements specified under sub-section (2) and sub-section (3).

(8) Any person intending to dispose of qualifying holdings in a domestic bank shall inform the State Bank of the disposal in writing not less than two weeks before the date of such disposal or such other period as may be specified by the State Bank in regulations made by it.

(9) A domestic bank shall not enter in its shareholders' register, the name of a person who makes an acquisition in contravention of this section or any regulations made by the State Bank under section 36.

(10) Where it comes to the knowledge of a domestic bank that any agreement or arrangement referred to in sub-section (1) has been effected in respect of the domestic bank, the domestic bank shall promptly inform the State Bank in a report setting out all relevant details and particulars which are within its knowledge.

(11) Every domestic bank shall, in addition to a report made under sub-section (10), submit an annual report to the State Bank of the names and addresses of shareholders having qualifying holdings in the domestic bank and the number of voting shares such shareholders hold in the domestic bank.

(12) For the purposes of this section, section 33 and section 35 –

- (a) “qualifying holdings” means five per centum or more of the voting shares of a company; and
- (b) “acting in concert” means acting pursuant to an agreement, arrangement or understanding, whether formal or informal, to actively co-operate in holding voting shares of a company.

(13) For the purposes of this section, the following persons shall be deemed to be persons acting in concert –

- (a) an individual and his family members;
- (b) a company and its associated companies or associated undertakings and subsidiaries; and
- (c) a cooperative society and its subsidiaries, and associated companies and associated undertakings of such subsidiaries.

**35. Dis-application.**

- (1) The provisions of section 33 and section 34 shall not apply to–
  - (a) the voting shares of a domestic bank acquired by another bank –
    - (i) in lieu of repayment of credit granted by that bank; or

(ii) under an underwriting arrangement, in which case that other bank shall dispose of such voting shares within such period as the State Bank may specify in regulations made by it; and

(b) Voting shares of a domestic bank held by another bank as an agent or custodian.

(2) A bank which has acquired voting shares of a domestic bank under clause (a) of sub-section (1) shall inform the State Bank upon its acquisition of such voting shares within such time or in such manner as may be specified by the State Bank in regulations made by it.

**36. Regulations on maximum permissible holdings in domestic banks.**

(1) The State Bank may make regulations specifying the maximum percentage of the voting shares of a domestic bank that may be held by any person.

(2) The State Bank may specify maximum percentages under sub-section (1) with respect to any class of companies, incorporated bodies, or individuals.

(3) For the purposes of sub-section (1) and sub-section (2), in computing the holding of a person, the following shall be deemed to be the holding of such person and added to his own holding:-

(a) where a person is an individual, the holding of his family members;

(b) where a person is a company, the holding of its associated companies, its associated undertakings and subsidiaries.

(4) No person shall hold voting shares of a domestic bank in excess of the maximum permissible holding as may be specified in regulations made under sub-section (1).

**37. Power of State Bank in respect of contravention of section 33, section 34 and section 36 and any regulations made there-under.**

(1) Where the State Bank is satisfied that any person has contravened the provisions of section 33, section 34, section 36, and any regulations made there under (hereinafter referred to as a “defaulting person”), the State Bank may make a preliminary order in writing (hereinafter referred to as an “order”) imposing one or more of the following:

(a) in respect of any voting shares which are the subject of the contravention,-

- (i) prohibit the transfer of, or the carrying out of the agreement or arrangement to transfer, such shares, or, in the case of un-issued shares, prohibit the transfer of, or the carrying out of the agreement or arrangement to transfer, the right to be issued with them;
  - (ii) prohibit the exercise of any voting rights in respect of such shares;
  - (iii) prohibit the issue of further shares pursuant to any offer made to their holder; or
  - (iv) except in a liquidation, prohibit the payment of any sums due from the domestic bank on such shares, whether in respect of capital or otherwise; or
- (b) in respect of the defaulting person, direct such person to sell or otherwise dispose of the voting shares which are the subject of the contravention, failing which the State Bank shall authorize the sale of such shares by public auction.

(2) An order made under sub-section (1) shall be served on the defaulting person as soon as practicable, and may be published in such manner as the State Bank deems fit.

(3) Any defaulting person against whom an order has been made under sub-section (1) may, within fourteen days of the service of the order on the defaulting person, make representations in writing to the State Bank applying for a revocation of the order on the ground that he had not contravened the provisions in relation to which the order has been made, or for a modification of the order on the ground that it would be just and proper to modify it for reasons to be specified in the representations.

(4) The State Bank may, after considering the representations made under sub-section (3), either confirm the order, or revoke it, or vary it in such manner as it deems fit.

(5) The State Bank may give directions to the directors or officers of a domestic bank as may be necessary to give effect to any order made under sub-section (1), or as may be incidental, ancillary or consequential to such order.

### **38. Board of Directors and Audit Committee.**

(1) Every domestic bank shall have a Board of Directors consisting of not less than seven members who shall be elected by the general meeting of the shareholders of the domestic bank.

(2) A meeting of the Board of Directors of a domestic bank shall not be duly constituted although the number of directors required to constitute the quorum at such

meeting is present, unless at least one half of the number of directors present at such meeting are directors who are non-executive directors.

(3) The responsibilities of the Board of Directors shall include the overseeing of the management of the affairs of the bank, and without prejudice to the generality of the foregoing, shall include—

- (a) adopting and reviewing a comprehensive risk management process that identifies, measures, monitors and controls material risks inherent in its business;
- (b) establishing and reviewing the system and procedures of control and risk management that are adequate for the nature and scale of the business of the bank;
- (c) adopting policies for clear organizational arrangements for delegating authority and responsibility;
- (d) adopting adequate internal practices and procedures that promote ethical and professional standards in the bank including “know your customer” procedures; and
- (e) adopting and reviewing the system of internal controls to ensure that the business of the bank is conducted in a prudent manner in accordance with policies and strategies established by it.
- (f) provide strategic direction to the organization
- (g) ensure evaluation (assessment) of the board as body and of individual directors as well.
- (h) put in place and ensure the implementation of a documented process of evaluating the performance of CEO as well as key management personnel by the board.

(4) The Board of Directors of a domestic bank shall set up an Audit Committee which consist of a majority of non-executive independent directors.

- (5) The oversight by Audit Committee shall include -
- (a) the establishment of appropriate procedures and controls for the bank and compliance with such procedures;
  - (b) the establishment of monitoring mechanisms in respect of compliance with the laws and regulations applicable to the bank; and

- (c) deliver opinions on any matters as may be required by the Board of Directors relating to audit of the bank.

(6) The Board of Directors shall without delay, cause a copy of the report made by the Audit Committee to be submitted to the State Bank of any irregularities or non-compliance with any of its policies, practices and procedures or any provisions of this Act or regulations made there under.

- (7) Notwithstanding any thing contained to the contrary in this Act or any other law, State Bank may specify the percentage of independent directors on the board of a bank, an entity specified in section 3 or a non-operating bank holding company.

(Explanation: The term “independent director” shall have the meaning given to it by State Bank in regulations made by it.)

### **39. FIT AND PROPER CRITERIA**

1. Every person who is, or is to be a director or manager of, or a person who holds five percent or more voting shares in, a bank shall be a fit and proper person to hold the particular position which he holds or is to hold on the basis of criteria to be prescribed by State Bank from time to time.

2. In determining whether a person is a fit and proper person to hold any particular position, the State Bank may take into consideration;

- a) his probity, his competence, soundness of judgment for fulfilling the responsibilities of that position, the diligence in which he is fulfilling or likely to fulfill those responsibilities and whether the interests of depositors or potential depositors are likely to be in any way threatened by his holding the position.
- b) that he possesses relevant academic or professional qualifications or relevant experience in banking, finance, business or administration or any other relevant discipline;
- c) that he has committed any offence involving fraud, deceit, dishonesty or violence;
- d) that he is or has been found guilty of an offence by any regulatory or supervisory authority, professional body or other body established by law in Pakistan or abroad by reason of any activity which involves financial mismanagement, fraud, deceit, dishonesty or any other improper conduct;
- e) that he has been convicted by any court in Pakistan or abroad in respect of a crime committed in connection with financial management;

- f) that he is an undischarged bankrupt or has been declared a bankrupt in Pakistan or abroad;
- g) that he has failed to satisfy any judgment or order of any court in Pakistan or abroad, or to repay a debt;
- h) that he is of unsound mind or is otherwise incapable of discharging his duties; or
- i) that he has been removed or suspended by an order of a regulatory or supervisory authority from serving as a director or officer in any financial institution or corporate body in Pakistan or abroad.

3. Without prejudice to section 42, every person who is or is to be a director of a bank shall, also, fulfill the following-

- (a) shall not be a director of another bank in Pakistan;
- (b) except as may be otherwise authorized by the State Bank, shall not subscribe to more than 5 percent of the total paid up capital of a bank; and
- (c) not more than a quarter of the number of proposed directors of a bank shall be from the same family as the term "family member" is defined in sub-section (1) of section 2.

4. Except as may be otherwise authorized in writing by the State Bank, every person who is or is to be appointed as a Shariah Advisor of bank under section 27 shall, in addition to the criteria specified in sub-sections (1) and (2) shall also meet the additional criteria as may be prescribed by State Bank. 5. State Bank may relax, partially, fit and proper criteria on the basis of risks and circumstances in particular cases or class of cases on which the criteria is applicable.

**40. Appointment, election and nomination of directors of domestic banks.**

(1) No person shall be appointed, elected or nominated as a director of a domestic bank unless such person has obtained the prior approval of the State Bank to hold such office.

(2) For the purposes of this section, a person shall not be considered as a fit and proper person if such person does not meet the fit and proper criteria specified in Section 39 and any other requirements or criteria specified by the State Bank in regulation made by it.

(3) An application for approval under sub-section (1) shall be accompanied by-

- (a) a resume showing the name, address, occupation, and professional qualifications and experience of the proposed director;
- (b) a list describing each of his substantial interests in the bank and in other entities, and each of his family member's substantial interest in the bank and in other entities;
- (c) a statement describing each of his positions as a director or officer of other entities, and each of his family member's positions as director or officer of other entities;
- (d) an affidavit signed by him which –
  - (i) certifies that he is not prevented by any provision of law from holding the office to which he is to be nominated, appointed or elected; and
  - (ii) states that he is a fit and proper person to hold such office in accordance with sub-section (2); and
  - (iii) states that he would carryout his responsibilities of overseeing the affaires of diligently in the interest of all stakeholders and depositors
- (e) an authorization signed by him permitting the State Bank to carry out financial, criminal and professional checks concerning him and permitting financial institutions, and the national and local tax collection and law enforcement authorities, to provide such information to the State Bank as the State Bank may require.

(4) The State Bank shall be authorized to carry out the checks referred to in clause (e) of subsection (3).

(5) Where any law, other than this Act, provides for the appointment, election or nomination of a person to the office of director of a domestic bank by virtue of another office the person holds, the preceding provisions of this section shall not apply to such appointment, election or nomination.

Provided that there is no conflict of interest between his existing and proposed position

(6) A director who has obtained the approval of the State Bank under subsection (1) who subsequently becomes aware that he does not meet the fit and proper criteria in accordance with sub-section (2) shall immediately inform the State Bank.

(7) Where a bank becomes aware of the fact that any of its directors does not meet or has ceased to meet the fit and proper criteria it shall immediately inform State Bank.

(8) Where a director of a domestic bank is removed under section 43, the State Bank may require such domestic bank to call a general meeting of the shareholders of the bank within such time as may be specified by the State Bank, to elect in accordance with the voting rights a new director, and the domestic bank shall comply with such requirement.

(9) Every director elected under sub-section (8) shall hold office until the date to which his predecessor would have held office as if the election had not been held.

(10) (a) A director of a bank, not being its chief executive, by whatever name called shall not hold office for more than six consecutive years. For computing the period of six consecutive years for the purpose of this sub-section, any break of less than three years in the continuity of office shall be disregarded.

(b) A director of a bank vacating office in pursuance of clause (a) shall not be eligible for re-election as a director of that bank unless a period of three years has elapsed since the date on which he vacated his office.

#### **41. Appointment of chief executive of a bank.**

(1) No person shall be appointed as a chief executive of a bank unless such person is a fit and proper person and has the prior approval of the State Bank to hold the office of the chief executive.

(2) For the purposes of this section, a person shall not be considered as a fit and proper person if such person does not meet the fit and proper criteria specified in Section 39 and any other requirement or criteria specified by the State Bank in regulations made by it.

(3) An application for approval under sub-section (1) shall be accompanied by—

- (a) a resume showing the name, address, occupation, and professional qualifications and experience of the proposed chief executive;
- (b) a list describing each of his substantial interests in the bank and in other entities, and each of his family member's substantial interest in the bank and in other entities;
- (c) a statement describing each of his positions as director or officer of other entities, and each of his family member's position as director or officer of other entities;
- (d) a sworn statement signed by him which –

- (i) certifies that he is not prevented by any provision of law from holding the office to which he is to be appointed; and
  - (ii) either states that he is a fit and proper person to hold such office in accordance with the fit and proper criteria in accordance with subsection (2); and
- (e) an authorization signed by him permitting the State Bank to carry out financial, criminal and professional checks concerning him and permitting financial institutions, and the national and local tax collection and law enforcement authorities, to provide such information to the State Bank as the State Bank may require.
- (4) The State Bank shall be authorized to carry out the checks referred to in clause (e) of subsection (3).
- (5) The State Bank may issue a code of practice and code of corporate governance for directors, chief executives and officers of banks, and the directors, chief executives and officers in respect to whom such code applies, shall comply with, and give full effect, to such code.

**42. Prohibition of common directors.**

- (1) Except with the prior approval of the State Bank, no domestic bank shall have as a director any person who is a director-
- (a) of any other domestic bank; or
  - (b) of companies incorporated in Pakistan which among themselves are entitled to exercise voting rights in excess of twenty per centum or such other percentage as may be specified by the State Bank in regulations made by it, of the total voting rights of all the shareholders of the domestic bank.
  - (c) on the board of more than five companies
  - (d) in the capacity of an executive director on the board of an associated company or a company that is a constituent of the banking group.
- (2) No domestic bank shall have as a director any person who is-
- (a) a Federal Minister, a Minister of State or a Provincial Minister or equivalent; or
  - (b) a person in the service of Government of Pakistan except appointed or nominated by government as a director by virtue of his office.

**43. Removal of directors or chief executive.**

(1) An individual shall be disqualified from holding the office of director of a domestic bank or a chief executive of a bank, as the case may be, if –

- (a) he is not a fit and proper person or if he is prevented from holding such office by or under a provision of this Act or other law;
- (b) in the case of a director of a domestic bank, he is a person whose appointment, election or nomination was not approved by the State Bank under section 40, or whose appointment, election or nomination was in contravention of section 42;
- (c) in the case of the chief executive of a bank, he is a person whose appointment has not been approved by the State Bank under section 41;
- (d) he has become permanently incapable of performing the duties of his office; or
- (e) he has committed an act which is detrimental to the objectives and interests of the bank or its depositors.

(2) A bank shall ensure that no person holds office as a director of the domestic bank or a chief executive of a bank, as the case may be, if sub-section (1) applies.

(3) Where a bank fails to comply with the requirement under sub-section (2), the State Bank may direct the bank in writing, to remove such person from the office of director or chief executive, as the case may be, within such period as may be specified in such direction.

(4) Notwithstanding the provisions of any other law, the State Bank shall within the period specified in the direction remove such person from the office of director or chief executive, as the case may be, and the bank concerned shall inform the shareholders of the bank and the Registrar of such removal.

(5) The removal of a director or chief executive, as the case may be, in accordance with the directions given under sub-section (3) shall take effect from the date mentioned therein, notwithstanding the provisions of any other law or the Memorandum of Association or Articles of Association of the bank.

**44. Disclosure of Interests.**

(1) Each director, chief executive and officer of a domestic bank and the chief executive and each officer of a foreign bank employed in Pakistan, shall disclose in full

to the Board of Directors once every year the substantial interests that he and his family members may have, whether directly or indirectly, in any company, entities or undertaking.

(2) The Board of Directors or committee constituted by the Board shall review the substantial interest referred to in sub-section (1) annually to determine any conflict of interest. A director and chief executive of a bank shall disclose the substantial interest referred to in sub-section (1) prior to any deliberations on it and he shall not be present where the deliberations or decisions on such matter take place whenever any matter related to such interest, whether declared or not, comes up for discussion in a meeting of the Board of Directors or any other committee of the bank with decision making authority.

(3) The minutes of the Board of Directors or other committees shall reflect the disclosures made under sub-section (2).

**45. Prohibition of employment of managing agents and restrictions on certain forms of employment.**

(1) Except as may be authorized by the State Bank, no person shall serve as executive director or officer of a bank except as an employee of such bank.

(2) Except as may be authorized by the State Bank, no bank—

(a) shall employ or be managed by a managing agent; or

(b) shall employ or continue the employment of any person—

(i) who is, or at any time has been, adjudicated insolvent or has suspended payment, or has compounded with his creditors, or who is, or has been, convicted by a criminal court of an offence; and

(ii) whose remuneration or part of whose remuneration takes the form of commission or a share in the profits of the bank:

Provided that nothing contained in subclause(ii) shall apply to the payment by a bank of :

(a) any bonus in pursuance of a settlement or award arrived at or made under any law relating to industrial disputes or in accordance with any scheme framed by such bank or in accordance with the usual practice prevailing in banking business; or

(b) any commission to any broker, cashier, contractor, clearing and forwarding agent, auctioneer or any other person, employed by the bank under a contract otherwise than as a regular member of the staff of the company;

- (c) Any remuneration in the form of commission to the sales staff or incentive schemes in the form of employees' stock options to employees of a bank
- (iii) who has a contract with the bank for its management for a period exceeding five years at any one time:

Provided that any contract with the company for its management may be renewed or extended for such further period as may be specified by the State Bank in regulations made by it.

**46. Liability of directors, chief executive and officers.**

(1) In addition to any liability imposed by the provisions of this Act or any other law, any director, chief executive or officer of a bank shall be liable for any loss or damage sustained by the bank or any depositor of the bank as a result of his gross negligence or willful misconduct in the performance of his functions or duties as director, chief executive or officer, as the case may be, of that bank.

(2) Actions to recover damages from a director, chief executive or officer under this section shall be commenced within three years after occurrence of the negligence or misconduct.

**47. Prosecution of directors, chief executive and officers.**

(1) Notwithstanding the provisions of section 43, the State Bank may direct prosecution of a director, chief executive or officer of a bank who, in the opinion of the State Bank, has knowingly acted in a manner causing loss of depositors' money or of the financial resources of the bank.

(2) For the purposes of this section, a director, chief executive or officer shall be deemed to have acted knowingly if he has deliberately departed from established banking practices and procedures, or contravened the regulations or related restrictions specified by the State Bank from time to time.

## PART VI

### FINANCIAL AND OPERATIONAL REQUIREMENTS OF BANKS

#### **48. Responsibility of State Bank and prudential requirements.**

(1) The State Bank shall monitor the performance of every bank on an ongoing basis with the objective of assessing financial soundness and risks of the bank as well as compliance with all applicable requirements, standards and regulations .

(2) The State Bank may make regulations in accordance with the provisions of this Act specifying the prudential requirements for banks which the State Bank shall use in its supervision of banks:

Provided that such requirements may be specified for all banks or may be specified for one or more classes or categories of banks, on the basis of the differences in the purpose, nature or size of business or the origin of financial resources, or nature of risks of such banks.

(3) Without prejudice to the generality of sub-section (2), the State Bank may make regulations in respect of the following :-

- (a) the liquid resources in relation to the value or change in value of assets (including guarantees and collateral received);
- (b) the liquid resources in relation to liabilities;
- (c) the maximum aggregate limit of all or certain categories of credit facilities or investments, guarantees and other commitments, whether contingent or not, and including without limitation, letters of credit, lines of credit and unused credit card balances;
- (d) margins to be maintained in respect of secured finances;
- (e) the ratio to be maintained between capital and assets and the mechanism thereof;
- (f) maximum amount or limit of credit facilities that may be made for the benefit of single customer and different classes of customers;
- (g) specific circumstances concerning the return profit, mark up, profit sharing ratio, fees and other conditions applicable to any type of credit facility extended or received (including deposits) or applicable to contingent liabilities;

- (h) the classification and evaluation of non-performing assets, and provisions to be made on the basis of such classification and evaluation, and the time when earnings on non-performing assets may no longer be accounted for as income; and
- (i) prohibitions, restrictions and conditions relating to:-
  - (i) the types or forms of credit facilities and investments made, and liabilities assumed (contingent or otherwise);
  - (ii) matching as to maturity and return in respect of assets and liabilities (contingent or otherwise); and
  - (iii) unhedged positions, exceeding a specified ratio, in any underlying asset or investment.

(4) A bank shall conduct its administration and operations in a sound and prudent manner and in accordance with the provisions of this Act, any conditions or restrictions attached to its banking license, and regulations made and instructions issued by the State Bank under this Act.

(5) A bank shall produce to the State Bank such evidence or information as may be required by the State Bank relating to its compliance with any provision of this Act, or any regulation made by the State Bank, or in relation to any particular matter.

**49. Regulation of paid-up capital and authorized capital of domestic banks.**

(1) No domestic bank shall carry on banking business in Pakistan unless it satisfies the following conditions:-

- (a) its paid-up capital is not less than such proportion of the authorized capital as may be specified by the State Bank in regulations made by it,;
- (b) the capital of the bank consists of such classes of shares as may be specified by the State Bank ;
- (c) subject to the provisions contained in clause (d), the voting rights of any one shareholder are strictly proportionate to the contribution made by him to the paid-up capital of the bank; and
- (d) the voting rights of any one shareholder, except those of the Federal Government or a Provincial Government, do not exceed such amount as may be specified in regulations made by the State Bank .

(2) Notwithstanding anything contained in any law for the time being in force or in any contract or instrument, no suit or other proceeding shall be maintained against any person registered as the holder of a share in a bank on the ground that the title to the said share vests in a person other than the registered holder:

Provided that nothing contained in this sub-section shall bar a suit or other proceeding—

- (a) by a transferee of the share on the ground that he has obtained from the registered holder a transfer of the share in accordance with any law relating to such transfer; or
- (b) on behalf of a minor or a lunatic on the ground that the registered holder holds the share on behalf of the minor or lunatic.

**50. Requirements relating to minimum paid-up capital and reserves etc.**

(1) No bank shall—

- (a) commence business unless it has such minimum paid-up capital as may be specified in the regulations made by the State Bank; and
- (b) carry on business unless the aggregate of its paid-up capital and unencumbered general reserves is of such minimum value as may be specified in the regulations made by the State Bank from time to time for banks in general or for any class or category of banks.

(2) No foreign bank shall be deemed to have complied with the provisions of sub-section (1) unless it maintains liquid assets for its operations in Pakistan with the State Bank, or keep such type of assets in Pakistan as may be specified in the regulations made by the State Bank, of an amount which is not less than what is required to be maintained under sub-section (1), in one or more of the following forms—

- (i) interest-free deposit in cash in Pakistani currency;
- (ii) interest-free deposit in a freely convertible approved foreign exchange within the meaning of the State Bank of Pakistan Act, 1956 (XXXIII of 1956), specified by the State Bank in respect of each foreign bank;
- (iii) deposit of un-encumbered approved securities; or
- (iv) such other form as the State Bank may specify in the regulations made by it.

(3) The State Bank may in writing require any bank which has failed to comply with the provisions of clause (b) of sub-section (1) to deposit with the State Bank within a specified period such amount not exceeding the amount by which the aggregate

value of the capital and unencumbered reserves of such bank falls short of the minimum amount of the aggregate of the capital and unencumbered general reserves to be maintained by such bank pursuant to clause (b) of sub-section (1) or sub-section (2) on such terms and conditions as the State Bank may determine.

(4) Any amount deposited and maintained with the State Bank under sub-section (2) by any foreign bank shall, in the event of the foreign bank ceasing for any reason to carry on banking business in Pakistan, be an asset of the bank on which the claims of all its creditors in Pakistan shall have a first charge.

(5) Each bank shall ensure that the value of its unimpaired capital shall at all times be equivalent to not less than such percentage of the total value of its assets determined on a risk-adjusted basis as may be specified in the regulations made by the State Bank.

(6) For the purposes of calculating the capital adequacy ratio of a bank which has any subsidiary, the State Bank may require in the regulations made by it the capital adequacy ratio of the bank or a class or category of banks, as the case may be, to be calculated—

- (a) on a consolidated or standalone basis or both; or
- (b) on a consolidated basis only in respect of such subsidiaries of the bank or class or category of subsidiaries of the bank, as the case may be.

(7) Any regulations made under sub-section (5) shall provide for—

- (a) the meaning of “capital” and “unimpaired capital”;
- (b) the assets to be classified;
- (c) the provisions for losses to be made; and
- (d) the values of capital and assets to be maintained by banks.

(8) For the purposes of this section, “capital” means paid up capital and reserves, and includes the whole or any portion of any other class, category or description of capital as may be specified in the regulations made by the State Bank.

(9) Whenever a director, chief executive or officer of a bank is aware that the capital of the bank is less than the value required by the regulations made by the State Bank, the director, chief executive or officer shall promptly notify the State Bank thereof.

## **51. Reserve Fund.**

(1) Every bank shall—

- (a) maintain a reserve fund; and
- (b) before any dividend is declared from its net profits of each year (after due provision is made for tax), transfer such amount and in such manner as may be specified in regulations made by the State Bank to the reserve fund out of the net profits of each year.

(2) If the State Bank is satisfied that the aggregate reserve fund of a foreign bank is adequate for its business in Pakistan, the State Bank may authorize such foreign bank to be exempted from the provisions of sub-section (1).

(3) Where a domestic bank appropriates any sum or sums from the reserve fund or the share premium account, it shall, within such period as may be specified by the State Bank in regulations made by it from the date of such appropriation, report the fact to the State Bank explaining the circumstances relating to such appropriation:

Provided that the State Bank may, in any particular case, extend the first mentioned period by such longer period as it thinks fit.

(4) Without prejudice to the generality of the provisions of sub-section (1), the State Bank may from time to time specify in regulations made by it, a different portion of the net profits of each year, being lesser or greater than the portion specified in sub-section (1), to be transferred to the reserve fund of a particular bank for the purpose of ensuring that the amount of the reserve fund of the bank is sufficient for the purpose of its business and adequate in relation to its liabilities.

## **52. Payment of dividends and transfers.**

(1) No domestic bank or company licensed or supervised by State Bank shall pay any dividend on its shares until all capitalized expenses (including preliminary expenses and other items of expenditure not represented by tangible assets) have been completely written off.

(2) Notwithstanding the provisions of sub-section (1) or any provisions of the Companies Ordinance, 1984, a domestic bank or company licensed or supervised by State Bank may pay dividends on its shares without writing off—

- (a) the depreciation, if any, in the value of its investment in approved securities in any case where such depreciation has not actually been capitalized or otherwise accounted for as a loss;
- (b) the depreciation, if any, in the value of its investments in shares, debentures or bonds (other than approved securities) in any case where adequate provision for such depreciation has been made to the satisfaction of the auditor of the bank;

- (c) until adequate provision for bad debts has been created, in accordance with the regulations made by the State Bank, to the satisfaction of the auditors of the bank; and
  - (d) the bad debts, if any, in any case where adequate provision for such debts had been made to the satisfaction of the auditor of the bank.
- (3) No foreign bank shall transfer any of its assets outside Pakistan—
- (a) until such time as all its capitalized expenses, including preliminary expenses and other items of expenditure not represented by tangible assets, have been completely written off;
  - (b) if as a result of the transfer, the aggregate book value of its assets would be less than the sum of the book values of its liabilities and unimpaired paid-up capital; and
  - (c) as long as it is in breach of a requirement imposed by or under this Act .

(4) Notwithstanding the provisions of sub-section (1) or Companies Ordinance, 1984, if a domestic bank meets the minimum capital requirement and capital adequacy ratio and provisioning requirement against classified assets as may be specified in the regulations made by the State Bank from time to time, and has accounted for the portion of capitalized expenses and goodwill for the financial year to the satisfaction of the auditors, the domestic bank may pay dividends on its shares out of profits of the bank for the financial year.

### **53. Cash Reserve.**

(1) Every bank shall maintain with the State Bank a balance the amount of which shall not at the close of business on any day be less than such proportion of demand liabilities and time liabilities of such bank in Pakistan as may be specified in the regulations made by the State Bank.

(2) Every bank shall submit to the State Bank a return showing the amount so held under sub-section (1) within such period and in such manner as may be specified by the State Bank in the regulations made by it.

(3) Notwithstanding the provisions of sub-section (1), the State Bank may from time to time specify in the regulations a different proportion of time and demand liabilities, being either lesser or greater than the proportions specified in sub-section (1), to be maintained as cash reserves.

### **54. Maintenance of liquid assets.**

(1) The State Bank may specify in regulations made by the State Bank that a bank shall hold such minimum, or minimum average, amount of liquid assets in Pakistan at all times or over such period of time, as may be set out in the regulations.

(2) The minimum or minimum average, amount of liquid assets specified in the regulations made under sub-section (1) shall be expressed as a percentage of all or such of its liabilities incurred by its offices in Pakistan as may be set out in the regulations.

(3) The State Bank may specify in the regulations made under sub-section (1)–

- (a) different minimum, or different minimum average amounts, of liquid assets for different classes or categories of banks;
- (b) different types of assets to be classified as liquid assets for different classes or categories of banks; or
- (c) different types of liabilities as mentioned in sub-section (2) to be classified as liabilities for different classes or categories of banks.

(4) The State Bank may prohibit any bank from giving any credit facilities to any person during the period in which the bank has failed to comply with any regulations made under sub-section (1).

(5) Every bank shall, furnish to the State Bank a return showing particulars of the bank's assets maintained in accordance with this section in such form and manner as may be specified by the State Bank in regulations made by it.

#### **55. Maintenance of assets in Pakistan.**

(1) At the close of business on any day, the assets in Pakistan of every bank, or such class or category of banks, shall at all times hold, shall not be less in value than an amount representing such percentage of all or such of the liabilities in Pakistan of the bank as may be specified in the regulations made by the State Bank.

(2) Every bank shall furnish to the State Bank in such form and manner as may be specified in regulations made by the State Bank a return showing particulars of the bank's assets maintained in accordance with sub-section (1).

- (3) for the purpose of sub-section (1), the State Bank may specify—
- (a) different minimum amounts of assets to be held in Pakistan by different classes or categories of banks;
  - (b) different types of assets to be classified as assets to be held in Pakistan for different classes or categories of banks; or
  - (c) different provisions for different classes or categories of banks in relation to any matter provided under the regulations.

**56. Prohibition of charge on unpaid capital and on assets**

(1) No domestic bank shall create any charge upon any unpaid capital of the domestic bank and such charge, if created, shall be invalid.

(2) No domestic bank shall create a charge on the undertaking or any of its assets or any part thereof, unless the creation of such charge is authorized in writing by the State Bank as not being detrimental to the interests of the depositors of such domestic bank.

(3) Any charge created without obtaining the authorization of the State Bank under sub-section (2) shall be invalid.

(4) Where any civil proceedings have been instituted against any domestic bank in respect of a charge upon unpaid capital of the domestic bank or over the undertaking or assets of the domestic bank, if these proceedings materially affect, or could materially affect the financial position of the domestic bank, the domestic bank shall promptly notify the State Bank of these proceedings and provide the State Bank with such particulars of those proceedings as may be required.

(5) The State Bank may specify in the regulations made by it the class or categories of charges in respect of banks and entities supervised by State Bank to which sub-section (1) and sub-section (2) shall not apply.

**57. Restrictions on acquisitions of immovable property by banks.**

(1) A bank shall not purchase or acquire any immovable property or any right therein except—

- (i) as may be reasonably necessary for the purpose of conducting its business;
- (ii) for housing or providing amenities for its staff; or
- (iii) as may be authorized in writing by the State Bank.

- (2) Sub-section (1) shall not-
- (a) prevent a bank from letting part of any building which is used for the purpose of conducting its business;
  - (b) prevent a bank from securing a debt on any immovable property and, in the event of default in payment of the debt, from holding that immovable property for realization by sale or auction at the earliest suitable opportunity; or
  - (c) apply where the acquisition of immovable property by the bank is in the course of its business in accordance with the provisions of Part IV and any regulations made there under.

(3) For the purpose of this section, property, a substantial portion of which is in use of a bank for its own genuine requirements, shall be deemed to be property for its own use.

#### **58. Bank Holidays.**

(1) The State Bank may, at any time by notification, declare any day or days to be a holiday or holidays for all banks or for any area, class, category or description of banks.

(2) No bank shall do any business with the public on any day declared a holiday for such bank under the provision of sub-section (1).

(3) A day declared as a holiday under the provision of sub-section (1) shall not necessarily be a public holiday and nothing in this section shall affect the provisions of any law relating to public holidays.

#### **59. Establishment of correspondent banking relationship**

(1) Subject to sub-section (2), a bank may establish a correspondent banking relationship with any other bank or financial institution outside Pakistan.

(2) The State Bank may specify in the regulations made by it the requirements in relation to the establishment of correspondent banking relationship by a bank including the country, territory or place outside Pakistan where such correspondent banking relationship may be established.

**60. Restrictions concerning establishment of offices etc.**

(1) No bank shall establish a new office or place of business in any part of Pakistan or change, otherwise than within the same city, town or village the location of an existing office or place of business situated in any part of Pakistan, without obtaining the prior authorization of the State Bank.

(2) No domestic bank shall establish a new office or place of business outside Pakistan or change, otherwise than within the same city, town or village in any country or area outside Pakistan, the location of an existing place of business situated in that country or area, without obtaining the prior authorization of the State Bank.

(3) Nothing in this section shall apply to the establishment for a period not exceeding one month of a temporary office or place of business within a city, town or village or the environs thereof within which the bank already has an office or place of business, for the purpose of affording banking facilities to the public on the occasion of an exhibition, a conference or a mela.

Provided that the bank shall inform to State Bank at least 5 days prior to such event

(4) The State Bank may, before giving the authorization under sub-section (1), conduct an inspection and call any information from the bank as it may deem necessary.

**61. Restrictions concerning subsidiaries.**

(1) No bank shall without the prior approval of the State Bank –

- (a) if it is a domestic bank, establish or acquire any subsidiary in or outside Pakistan; or
- (b) if it is a foreign bank, establish or acquire any subsidiary in Pakistan,

(2) An approval under sub-section (1) may be given if the subsidiary or proposed subsidiary of the bank -

- (a) carries on any activity that such bank may carry on under this Act; or
- (b) an activity that the State Bank may determine to be incidental to or compatible with an activity that the bank may carry on under this Act.

(3) The provisions of sub-section (1) shall not apply to subsidiaries of a bank formed before the coming into force of this Act.

**62. Restriction on investments by domestic banks in other enterprises.**

(1) Subject to sub-section (2), a domestic bank shall not acquire or hold shares of, or hold a participation in, whether by one acquisition or participation or a series of acquisitions or participations and by whatever means, any entity to a value of five per cent or more of the unimpaired capital funds of the domestic bank at the time of the acquisition or participation, as the case may be, unless the approval of the State Bank has been given to such proposed acquisition or participation.

(2) Sub-section (1) shall not apply-

(a) where the domestic bank acquires or holds any shares of any entity under an underwriting or sub-underwriting contract for a period not exceeding seven business days, or such further period as the State Bank may approve in writing, and subject to such conditions as it thinks fit;

(b) where the domestic bank acquires or holds any shares of any enterprise as part of its business in accordance with the provision of Part IV and any regulations made there under;

(c) to any acquisition or holding of shares, or participation in as may be approved in writing by the State Bank in-

(i) another bank under section 33; or

(ii) another company that is a subsidiary of the bank under section 61; and

(d) in the course of the satisfaction of any debt due to such domestic bank only if such acquisition or participation is declared in writing to the State Bank and is disposed of within such period from the date of acquisition as may be specified in the regulation made by the State Bank.

(3) For the purposes of this section, the State Bank may by regulations specify-

(a) any term and condition under which an acquisition or holding of, or participation in, an enterprise may be made by such banks; and

(b) the nature and maximum value of shares or participation in any enterprise and aggregate values of all shares or participations, as the case may be, that may be made by such banks.

(4) Where a domestic bank has contravened the provisions of this section or any regulations made there under, the State Bank may-

- (a) prohibit such domestic bank from increasing the amount of shares or participation in an entity; and
- (b) require such domestic bank to decrease the amount of its shares participation in an entity to specified limits within a specified period of time.

**63. Credit facilities and limits.**

- (1) Subject to sub-section (3), a bank shall not—
  - (a) grant or permit to be outstanding to any one person or to any group of persons under the control or influence of any person, any credit facilities if the aggregate amount of such credit facilities exceeds such amount of its capital as the State Bank may specify in the regulations made by it;
  - (b) grant substantial loans or finance to any one person or to any group of persons under the control or influence of any person which in the aggregate of its total credit facilities, exceeds such percentage as the State Bank may specify in the regulation made by it;
  - (c) grant any credit facility or enter into any other transaction against the security of its own shares, or the shares of its holding company or its subsidiaries;
  - (d) grant, directly or indirectly, unsecured credit facilities which in the aggregate and outstanding at any one time, exceed such amount as may be specified by the State Bank in the regulations made by it -
    - (i) to any of its directors, whether those credit facilities are obtained by its directors jointly or severally;
    - (ii) to a company or an entity in which the bank or any of its shareholder, holding such percentage of shares as may be specified by State Bank or any of its directors has an interest as a partner, manager or agent, or to any individual or firm of whom or of which any of its directors is a guarantor;
    - (iii) to a company or entity in which any of its directors, whether legally or beneficially, has substantial interest or in which any of its directors controls the composition of the board of directors; the securities of which are listed on a Stock Exchange in Pakistan or any other stock exchange which the State Bank may approve; or

- (iv) to any company or entity, other than a bank, that is deemed to be its associated company or associated undertaking; or
  - (e) grant to any of its officers (other than a director) or its employees or other persons, being persons receiving remuneration from the bank other than any persons receiving remuneration from a bank in respect of their professional services, unsecured credit facilities which in the aggregate and outstanding at any one time exceeds such amount of emoluments of that officer or employee or person as may be specified by the State Bank in regulations made by it.
- (2) clause (a) and clause (b) of sub-section (1) shall not apply to—
- (a) transactions with the Government;
  - (b) transactions between banks;
  - (c) the purchase of telegraphic transfers or loans or advances made against telegraphic transfers;
  - (d) any facilities provided to finance the export of commodities eligible under Export Financing Scheme;
  - (e) any facilities covered by the guarantee of the Pakistan Export Finance Guarantee Agency;
  - (f) any loans given to the employees of banks in accordance with their scheme of service with the bank; and
  - (g) any other type of transactions which the State Bank may from time to time authorize in regulations made by it.

(3) For the purposes of sub-section (1), in computing the amount of any credit facility given to a single person, or any liability incurred on behalf of a single person, any credit facility given to, or any liability incurred on behalf of, the following persons shall be deemed to be a credit facility given to, or a liability incurred on behalf of such single person –

- (a) where such single person is an individual or his family member;
- (b) where such single person is a company or an entity, its associated companies or associated undertakings and subsidiaries;
- (c) where such single person is a society registered under any law relating to cooperative societies, its subsidiaries and the associated companies or associated undertakings of such subsidiaries; or

- (d) persons acting in concert with such single person.

Provided that the State Bank may specify in regulations made by it that all or any of the persons, or any particular person, or any class, category or description of persons mentioned in the foregoing clauses shall be excluded in the application of this sub-section to which a credit facility is to be given, and at the same time specify the criteria or the basis on which the said person or persons are to be excluded.

**64. Requirements relating to credit facilities.**

- (1) A bank shall ensure that the bank has established and maintained—
  - (a) adequate internal policies, practices and procedures relating to the granting of credit facilities, making of investments and the ongoing management of the loan and investment portfolios; and
  - (b) adequate internal policies, practices and procedures for evaluating the quality of assets and the adequacy of loans loss provisions and loan loss reserves.
- (2) No bank shall enter into any financial arrangement or provide any credit facility in excess of the limit specified by the State Bank in regulations without obtaining credit information on the borrower from the Credit Information Bureau maintained or authorized by State Bank of Pakistan.

**65. Submission of information, reports etc. relating to credit facilities to State Bank.**

The State Bank may direct a bank to –

- (a) submit any information relating to its policy and procedures for the giving of any credit facility;
- (b) submit a report on the limit or the terms and conditions imposed, the directions given, and the agreements made in relation to the authority of every director, chief executive or officer of the bank to give credit facilities or exercise any power in respect thereof; or
- (c) make such amendments to the policies or procedures referred to in clause (a), or to make such variations in the matters mentioned in clause (b), as the State Bank deems fit and proper, either generally, or in relation to any director, chief executive or officer, and such amendments and variations shall be binding on the bank and its directors, chief executive and officers.

**66. Power of State Bank in relation to recovery of loans and advances by banks.**

Whenever the State Bank is satisfied that it is necessary or expedient in the public interest to do so, it may determine the policy in relation to recovery of loans and advances to be followed by banks generally or any class or category of banks and, when the policy has been so determined, all banks, or such class or category of bank as the case may be, shall be bound to follow the policy so determined.

**67. Restrictions on removal of records and documents.**

(1) No bank shall remove from Pakistan to a place outside Pakistan any of its records and documents relating to its business or its branches, without the prior written permission of the State Bank.

(2) In this section, the term “records” means ledgers, day books, cash books, accounts books and all other books used in the business of a bank and the term “documents” means vouchers, cheques, bills, pay orders, securities for advances and any other documents supporting entries in the books of, or claims by or against, a bank, whether such records and documents are stored in electronic form or otherwise.

**68. Records of transactions and commitments.**

(1) A bank shall keep on file the relevant documents and records for each one of its transactions and commitments, in such form as shall render the documents admissible as evidence in court including –

- (a) the applications and all contract documents relating to such transactions or commitments including credit, guarantee and collateral agreements, financial master agreements and trade records;
- (b) the financial records of their counter parties including borrowers and guarantors, and any other documentary evidence on which they have relied in approving such transactions or commitments;
- (c) records of their decisions approving such transactions or commitments;
- (d) the agreements with its customers and with other financial institutions; and

such other documents as the State Bank may specify in the regulations made by it.

(2) For the purposes of sub-section (1), the State Bank may specify in regulations made by it the period within such documents and records are to be kept by a bank.

## **PART VII**

### **REPORTING, INSPECTION AND AUDIT**

#### **69. Maintenance of Accounts and Records etc.**

(1) Notwithstanding the provisions of any other law, every bank shall maintain at all times accounts and records, and prepare periodic financial statements, adequate to reflect its operations and financial conditions, in such form and manner as may be specified in regulations made by the State Bank.

(2) Without limiting the generality of sub-section (1), each foreign bank shall maintain separate books, accounts and records, and shall prepare financial statements including profit and loss accounts, that reflect the assets, liabilities, income and expenses of its branch in Pakistan and that are segregated from the books, accounts, records and financial statements of the corporate headquarters of the foreign bank.

#### **70. Preparation of Financial Statements**

(1) Except as may be authorized by the State Bank, at the expiration of each financial year, every bank shall prepare with reference to that year, financial statements in respect of the financial year.

(2) The financial statements of a bank shall reflect its operations and financial condition and those of its subsidiaries, both on an individual basis and on a consolidated basis.

(3) The financial statements shall be signed—

(a) in the case of a domestic bank, by the chief executive and at least three directors of the bank; and

(b) in the case of a foreign bank, by the Country Head and another officer next in seniority to the Country Head of its branch in Pakistan.

(4) Notwithstanding the provisions of the Companies Ordinance, 1984, the State Bank may make regulations concerning the form, content and certification of financial statements and other disclosure statements to be made under this Part and where such form or content is specified, the financial statements and disclosure statement of every bank shall be prepared accordingly.

(5) For the purposes of this section and section 71, “financial statements” include the balance sheet, profit and loss accounts, statement of changes in equity, cash flow statement and notes to the accounts.

**71. Financial statements to be submitted to the State Bank.**

(1) After the close of each financial year, a bank shall submit to the State Bank in respect of its entire operations in Pakistan, three copies each of the latest audited financial statements prepared in accordance with approved accounting standards and the report of the auditor and its directors as required under the Companies Ordinance, 1984, within such period as may be specified by the State Bank in regulations made by it.

(2) In the case of a domestic bank with subsidiaries or offices outside Pakistan, within the time stipulated in sub-section (1), the domestic bank shall, in addition to the requirements under sub-section (1), submit to the State Bank, all the documents referred to under sub-section (1) in respect of—

- (a) its operations in each country outside Pakistan;
- (b) its entire operations both in and outside Pakistan on a consolidated basis.

(3) Where applicable, the holding company of a domestic bank shall submit to the State Bank within the time stipulated in sub-section (1) the latest audited financial statements which reflect the operations and financial position of the holding company, both on an individual basis and on a consolidated basis.

(4) The State Bank may require a bank referred to in sub-section (1), sub-section (2) or sub-section (3) to submit any additional information as it may deem necessary either by way of explanation, amplification or otherwise with regard to any documents submitted under sub-section (1), sub-section (2), or sub-section (3), as the case may be, or to amend or modify the documents in accordance with such form or content as the State Bank may deem appropriate.

**72. Submission of statistics and returns to State Bank.**

(1) Every bank shall—

- (a) within such time as may be stipulated in the regulations made by the State Bank, submit to the State Bank a periodic return in the form and manner and at such interval as may be specified in regulations showing its assets and liabilities in Pakistan; and
- (b) submit such further information, documents, statistics or returns as the State Bank may require or as may be specified in the regulations made by it.

(2) Every domestic bank which operates any office outside Pakistan shall submit to the State Bank such information or statistics relating to the operations of such office as may be specified in the regulations made by the State Bank.

(3) The State Bank may, at any time by notice in writing, require banks generally, or any bank in particular, to furnish it within the time specified therein or such further time as the State Bank may allow, with any statement or information relating to the business or affairs of such banks or bank, as the case may be, and without prejudice to the generality of the foregoing, may call for information at such intervals as the State Bank may deem necessary regarding the investments of banks and the classification of their advances in respect of different sectors of the economy

(4) Except as may be permitted under this Act, any information received from a bank under this section shall be regarded as secret between that bank and the State Bank.

(5) Notwithstanding anything in this Act, the State Bank may publish consolidated statements in respect of each class or category of banks as the State Bank deems appropriate aggregating the statistics submitted under this section, and no provision in any law relating to secrecy shall apply to such consolidated statements.

**73. Publication and display of audited balance sheet and profit and loss accounts.**

Every bank shall within such time as may be specified by the State Bank in regulations made by it, publish in not less than two daily newspapers circulating in Pakistan, and exhibit thereafter throughout the year in a conspicuous place at every of its office in Pakistan, a copy each of abridged version of its latest audited balance sheet, profit and loss accounts and such other financial statements in such format and manner as the State Bank may specify in the regulations.

Provided that a copy each of latest audited financial statements shall be placed on the website of the bank and be available in each branch of the bank

**74. Copies of balance sheet and profit and loss accounts to be sent to Registrar.**

(1) Where a bank in any year furnishes its financial statements in accordance with the provisions of section 71, the bank shall at the same time send to the Registrar three copies of the balance sheet, profit and loss accounts and the auditor's report.

(2) Where copies of balance sheet and profit and loss accounts are sent to the Registrar under sub-section (1), it shall not be necessary for the bank to file copies of the balance sheet and profit and loss accounts with the Registrar as required by section 242 of the Companies Ordinance, 1984, and such copies so sent shall be chargeable with the same fees and shall be dealt with in all respects as if they were filed in accordance with that section.

**75. Reporting of financial difficulties and material events to State Bank.**

A bank shall immediately inform the State Bank if it becomes aware of-

- (a) any matter which adversely affects, or is likely to adversely affect, the ability of the bank to meet its obligations in respect of its business including the ability of the bank to comply with the financial requirements under this Act; or
- (b) any irregularity, breach of any provision of this Act, or any other matter which indicates, or may indicate, that the financial standing or financial integrity of the bank is in question or may reasonably be affected.

**76. Inspection.**

(1) The State Bank shall, from time to time and at intervals it deems appropriate, examine, the books or other documents, accounts and transactions of each bank and of any office outside Pakistan of a domestic bank.

(2) The inspection shall be carried out by such officer of the State Bank as the State Bank may authorize who in this Part is referred to as “inspecting officer”.

(43) It shall be the duty of the directors, chief executive and officers of a bank to produce to any inspecting officer making an inspection under this section all such books, accounts and other documents in his custody or power, and to furnish the inspecting officer with such statements, information and facilities within such reasonable time and form as the inspecting officer may require.

(4) The inspecting officer may examine on oath any directors, chief executive or officer of a bank in relation to its business and may administer an oath accordingly.

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(5) For the purposes of ascertaining the true condition of the affairs of a bank under inspection, the State Bank may for the purpose of an inspection under this section, also examine the business of any firm or company, enterprise or account, which is or has been at any relevant time –

- (a) a holding company or subsidiary of the bank under inspection;
- (b) a subsidiary of a holding company of the bank under inspection;
- (c) an associate company or associate undertaking or subsidiary of the bank under inspection ; and
- (d) an enterprise or account under the control or administration of the bank under inspection,

and may exercise in relation to such aforementioned persons any of the powers conferred on the State Bank under this Part. The bank, and any such subsidiary, holding company or affiliate shall provide un-restricted access to the authorized inspecting officer(s) to carry out such inspection

**77. Inspection by foreign supervisory authority assistance to and cooperation with such authority.**

(1) A supervisory authority which is responsible for regulating the principal place of business of a foreign bank, in the country of its origin, may with the prior written approval of the State Bank conduct an inspection, solely for supervisory purposes and under conditions of secrecy, of the books and accounts of any branch of the foreign bank in Pakistan if the following conditions are satisfied—

- (a) where it has obtained the prior written approval of the State Bank;
- (b) where the supervisory authority is prohibited by its domestic law from divulging information obtained in the course of the inspection to any other person or where the supervisory authority has given such written undertaking, as to the confidentiality of the information obtained, as the State Bank may determine; and
- (c) where it has given to the State Bank a written undertaking to comply with the provisions of this Act and any conditions imposed by the State Bank under this section.

(2) A supervisory authority referred to in sub-section (1) shall for the purposes of this section be referred to as a “foreign supervisory authority”.

(3) Subject to any condition imposed by the State Bank under sub-section (4), a foreign supervisory authority in carrying out an inspection under sub-section (1) may examine the credit facilities and the internal control systems of the branch of a foreign bank in Pakistan (including internal control systems relating to the treasury and other operations in the branch) and, with the prior approval of the State Bank, examine any other matters relating to such branch.

(4) The State Bank shall, at any time before or after granting approval an inspection under this section, require the foreign supervisory authority to comply with the conditions relating to—

- (a) the classes of information to which the supervisory authority shall or shall not have access in the course of the inspection;
- (b) the conduct of the inspection;

- (c) the disclosure of information obtained in the course of the inspection; and
- (d) such other matters as the State Bank may determine.

(5) Upon conclusion of an inspection made by a foreign supervisory authority under this section, the foreign supervisory authority shall extend a copy of its report to the State Bank.

(6) Notwithstanding any provision to the contrary in this Act or any other law for the time being in force, the State Bank may, upon receiving a written request from a foreign supervisory authority for assistance to investigate into an alleged breach of a legal or regulatory requirement which the foreign regulatory authority is responsible for or, provide assistance to such foreign supervisory authority by carrying out investigation of the alleged breach or provide such assistance to the foreign supervisory authority as the State Bank thinks fit.

(7) For the purposes of subsection (6), the powers conferred on the State Bank under this Act shall, with such adaptations as are necessary, apply and have effect as if the alleged breach were an offence under this Act.

(8) In determining whether it is in the interest of the public to render assistance under sub-section (6), the State Bank shall have regard to whether the foreign supervisory authority will-

- (a) pay to the State Bank any costs and expenses incurred for providing assistance to the foreign supervisory authority; and
- (b) be able and willing to provide reciprocal assistance within its jurisdiction in response to a comparable request for assistance from the State Bank.

**78. Inspection report.**

(1) At the conclusion of an inspection made under section 76, the State Bank shall prepare an inspection report on the financial condition, risk management and internal control, of the bank and identify the significant weaknesses in the bank that need to be addressed.

(2) The Board of Directors shall promptly report to the State Bank all remedial measures that have been taken or are being taken by the bank in relation to the matters raised in the inspection report.

(3) A director, chief executive or officer of a bank and any person who by reason of his capacity or office has by any means access to a report produced by the State Bank or a foreign supervisory authority upon inspection under section 76 or section 77, as the case may be, shall not while holding that office, being employed in or having a professional relationship with the bank, as the case may be, or after the termination

thereof, communicate the report or any part thereof to any person other than a director, chief executive or officer of the bank except with the prior written permission of the State Bank.

**79. Audit.**

(1) The financial statements prepared in accordance with section 70 shall be audited by a person who is Chartered Accountant within the meaning of Chartered Accountants Ordinance, 1961 (X of 1961), or any other law for the time being in force, to be an auditor and whose name appears on the panel of auditors maintained by the State Bank as persons to be suitable auditors for banks.

(2) The panel of auditors so maintained by the State Bank under sub-section (1) may classify auditors in different categories for different banks taking into account the scope, complexity and size of the operations of the banks.

(3) An auditor of a bank shall hold office for a period of three years and shall not be removed from office before the expiry of that period except with the prior approval of the State Bank:

Provided that such auditor shall not hold office for a period exceeding six years.

Provided further that the partner shall be rotated after every three years.

(4) The State Bank may, from time to time, specify in the regulations the scope, approach and procedures that an auditor of a bank shall follow in its audit of a bank.

(5) Each bank shall promptly after the appointment of an auditor in accordance with the provisions of this section, inform the State Bank of the name and business address of the auditor.

(6) If a bank fails to appoint an auditor in accordance with the provisions of this section, the State Bank shall be authorized to appoint an auditor to carry out the duties of an auditor at the expense of the bank.

(7) If the State Bank is not satisfied with the performance of the auditor of a bank or the auditor has not fulfilled any of the requirements specified in the regulations made under sub-section (4), the State Bank may, after giving the auditor an opportunity to be heard,—

- (a) notwithstanding the provisions of the Companies Ordinance, 1984, revoke the appointment of the auditor for the bank;
- (b) downgrade the auditor in the panel referred to in sub-section (1);

- (c) remove his name from the panel of auditors for a maximum period of five years; or
- (d) direct the bank to appoint another auditor in accordance the provisions of this section.

(8) Where, in the performance of his duties as an auditor for a bank, the auditor becomes aware of any matter or irregularity that may have a material effect upon the financial position of the bank or serious violation of any law the auditor shall immediately report the matter or irregularity, as the case may be, to the State Bank under intimation to the bank.

(9) When an auditor makes a report under sub-section (8), the auditor shall not be liable to be sued in any court in respect of any statement made by the auditor in good faith, after exercising due diligence, in his report made under sub-section (8).

(10) An auditor appointed in accordance with the provisions of this section shall have the powers of, and exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by virtue of section 260 of the Companies Ordinance, 1984, and without prejudice to the generality of the foregoing, shall have a right of access at all times to the books, accounts, vouchers and all documents and records belonging to the bank, which he considers necessary for the performance of his duties, and he shall be entitled to require from the directors and officers of the bank, such information and explanations as he thinks necessary for the performance and proper discharge of his duties as an auditor.

## **80. Audit Report.**

(1) Every audit report shall be completed within three months of the end of the financial year of the bank, and shall contain a statement by the auditor as to whether in the opinion of the auditor, the balance sheet and profit and loss accounts of the bank are true and fair statement of the financial affairs of the bank.

- (2) An audit report of a bank shall include the following:
  - (a) an assessment on whether proper accounting system and procedures have been adopted and followed;
  - (b) an assessment on whether proper financial control and risk management systems and procedures have been adopted and followed;
  - (c) the balance sheet and profit and loss accounts of the bank;
  - (d) any fact or decision concerning the bank which the auditor is aware which appears to the auditor to constitute a material breach of the provisions of the bank license, or of the provisions of this Act any regulations or cause

the auditor to refuse to issue an audit report or issue a qualified audit report; and

- (e) any other requirements as may be prescribed by the State Bank from time to time.

(3) In addition to the matters referred in sub-section (1) and sub-section (2) and any regulations made under sub-section (4) of section 79, an auditor of a bank is required to state in the audit report, the following:

- (a) whether or not the information and explanations required by him have been found to be satisfactory;
- (b) whether or not the transactions of the bank which have come to his notice have been within the powers of the bank;
- (c) whether or not the returns received from branch offices of the bank have been found adequate for the purposes of his audit;
- (d) whether the profit and loss account shows a true and fair view of the profit and loss for the period covered by such account; and
- (e) any other matter which he considers should be brought to the notice of the shareholders of the bank.

(4) Upon the completion of an audit report of a bank, but not later than three months after the end of the financial year, the bank shall cause the audit report together with the auditor's management letter, to be transmitted to the State Bank.

(5) Where the State Bank is of the opinion that the audited financial statements do not exhibit a true and fair view of the affairs of the bank or that the auditor's report or management letter are unsatisfactory, it may direct the bank to require the auditors or newly appointed auditors, as the case may be, to submit a fresh report or management letter, at the expense of the bank.

(6) Notwithstanding the provisions of sub-section (5), the State Bank may, on receipt of the report referred to in that sub-section, call upon the auditors appointed by the bank to—

- (a) submit such additional information in relation to the audit, as the State Bank considers necessary;
- (b) enlarge or extend the scope of the audit of the business and affairs of the bank or its subsidiaries;

- (c) carry out such other examination required by the State Bank or recommend to the bank any procedure in respect of a particular matter; or
- (d) submit a report on any of the matters referred to in clause (b) or clause (c),

and the bank bear the expenses for the costs of such additional audit or such other work carried out under this section.

### **81. Additional Requirements for auditors etc.**

(1) The State Bank may by notice in writing, require any person who is, or who has been, an auditor of a bank, a subsidiary of a domestic bank or a branch of a domestic bank outside Pakistan to provide such information or to produce such books, accounts or documents relating to the bank and such branch or subsidiary of the domestic bank, if the State Bank considers that the provision of the information, or the production of the book, accounts or documents, will assist the State Bank in performing its functions under this Act, and such person shall provide assistance to the State Bank as required under the notice.

(2) No auditor or person referred to under section 80 or sub-section (1), shall be liable to be sued in any court or be subject to any action under any professional code of conduct as may be applicable to the auditor, in respect of any information provided or books, accounts or documents produced to the State Bank under section 80 or this section.

(3). The State Bank may by notice in writing require an auditor or person referred to under section 80 or sub-section (1), to disclose their shareholding in a domestic bank, and subsidiary of the domestic bank and give an undertaking not to trade in the securities of domestic bank and its subsidiary on the basis of the information of preceding six months during their audit of the domestic bank or subsidiary of the domestic bank

## **PART VIII**

### **POWERS OF STATE BANK IN RELATION TO ILLEGAL BANKING BUSINESS, ILLEGAL DEPOSIT TAKING, AND OTHER CONTRAVENTIONS OF THIS ACT.**

#### **82. Power to call for certain information.**

Where it appears to the State Bank that any person is contravening or has contravened the provisions of section 10, section 23, section 24, section 25 or any other provision of this Act (hereinafter referred to in this Part as “defaulting person”), the State Bank may—

- (a) direct the defaulting person, or any other person who is, or has at any time been dealing, doing business or associated in any manner, with the defaulting person (hereinafter referred in this Part to “such other person”), to give or furnish to the State Bank, within such time as the State Bank may specify in its direction, such information, documents or records in respect of any business carried on by the defaulting person or such other person, as the case may be;
- (b) authorize any officer of the State Bank or any other person authorized by the State Bank to enter and search any premises and seize books, accounts or other documents or records in respect of any business carried on by the defaulting person or such other person, as the case may be, which are or were under the possession, custody or control of the defaulting person or such other person;
- (c) inspect or examine, or cause to be inspected or examined any of the books, accounts or other documents or records of the defaulting person or such other person; and
- (d) exercise, any powers conferred on the State Bank under section 76 as far as may be applicable in relation to the defaulting person or any other person.

#### **83. Special provisions.**

(1) Where the State Bank has called for information under section 82 and it appears to the State Bank that, in the interest of the person for whom the deposits were received, it is necessary that the moneys received and other assets of the defaulting person whether held in the name of the defaulting person or otherwise are protected and preserved, the State Bank may, without prejudice to any other action or proceeding which may be taken against such defaulting person under any other provisions of this Act or any other law for the time being in force, by written direction—

- (a) appoint one or more persons as interim receiver or receivers authorizing him, or as the case may be, each one of them to—
  - (i) enter and search any premises and seize books of accounts or other documents or records of such deposits of money; and
  - (ii) take in his custody, on behalf of the State Bank, all moneys, cash securities, title deeds, properties, whether movable or immovable, belonging to such defaulting person, including those being held on behalf or in the name of any director, manager, officer, partner, employee, agent, beneficiary or transferee of such defaulting person or their dependants;
- (b) require any bank, financial institution or any other person to freeze all moneys deposited with it or him on behalf of the defaulting person or of any director, manager, officer, partner or employee, agent, beneficiary or transferee of such defaulting person;
- (c) authorize a person appointed under clause (a) to take all necessary steps and measures for identifying the assets and properties of the defaulting person and for realization, protection and preservation thereof;
- (d) restrain any or defaulting person or any director, manager, officer, partner or employee or agent, beneficiary or transferee of such defaulting person or such other person deriving or claiming title through any of them, from alienating, transferring, selling, assigning, disposing of or parting with possession of any property, movable or immovable, or deriving any benefit, rent or income there-from; and
- (e) make such orders for realization, protection and preservation of deposits of money and other assets and properties of the defaulting person, as it may deem fit.

(2) A direction issued under sub-section (1) shall, unless it is earlier withdrawn in pursuance of the proviso to sub-section (1) of section 84, remain in force until possession of the moneys, cash securities, title deeds, properties, book of account, documents or records to which the order relates is taken over by the official liquidator or, as the case may be, the High Court, in pursuance of an order of the High Court under section 88:

Provided that any order made under sub-section (1) shall not prevent the High Court from determining the right of a person claiming to have acquired the property or asset from the defaulting person, bona fide and for valuable and adequate consideration which such person shall be required to prove as paid from his own resources.

(3) A copy of an order made under sub-section (1) shall be sent to the Registrar or such other officer or authority or person as the State Bank may deem proper.

(4) If the State Bank or any person authorized under sub-section (1) require assistance of the police or any other civil authority in the exercise of powers or discharge of functions under this Part, a requisition may be sent to the officer in charge of a police station or to such other authority who shall provide the requisite assistance.

#### **84. Power to make declaration.**

(1) Without prejudice to the provision of Part X, where the State Bank, after making such inquiries as it may deem fit, is of the opinion that a defaulting person is receiving or has received deposits in contravention of section 23, section 24 or section 25, or has contravened any other provisions of this Act, the State Bank may, after giving the defaulting person an opportunity to make representations to it against the proposed action being taken, make a declaration to that effect:

Provided that, in a case in which the State Bank has made direction under sub-section (1) of section 83 in respect of a defaulting person, the State Bank shall make a declaration under this sub-section in respect of such defaulting person within three months of the issuance of such direction or within such further time, not exceeding three months in the aggregate, as the High Court may allow, or withdraw such direction.

(2) The State Bank shall publish, or cause to be published, a declaration made under sub-section (1) in two newspapers having wide circulation in the area in which the registered office of defaulting person or the principal office of the person, to which or to whom the declaration relates is situated; and upon such publication, the defaulting person or the chief executive, by whatever name called, or directors, managers, officers, employees or agents of the defaulting person, or any other person referred to in sub-section (1), sub-section (3) or sub-section (4) of section 86 or section 87, shall not be heard to plead ignorance of the making of the declaration.

(3) A declaration made under sub-section (1) shall, for the purposes of this Part, be conclusive proof of the fact stated therein.

#### **85. Consequences of a declaration made under section 84.**

(1) A person in respect of which or whom a declaration has been made under sub-section (1) of section 84 shall, on the publication of such declaration in pursuance of sub-section (2) of that section, cease to function or to transact business and any transaction with such defaulting person, or with any person acting or purporting to act for and on behalf of such defaulting person, on or after the publication of the declaration as aforesaid, shall be void.

(2) The provisions of sub-section (1) and section 86, section 88 and section 89 shall, as far as may be, apply to company or undertaking which is an associated undertaking of a defaulting person in respect of which or whom a declaration under sub-section (1) of section 84 is made.

**86. Deposit of cash and preservation of assets, etc.**

(1) Notwithstanding anything contained in section 85, where a declaration under sub-section (1) of section 84 has been made in respect of any defaulting person, every person who has in his possession or custody, or under his control, any moneys, movable properties, shares, securities of any description or title deeds relating to property which belong to the defaulting person shall promptly deposit, or cause to be deposited, such moneys, movable properties, shares, securities and title deeds with any of banks or any other person as may be specified by the State Bank.

(2) If any person who is required by sub-section (1) to deposit, or to cause to be deposited, any moneys, movable properties, shares, securities or title deeds fails to do so within two business days of the publication of the declaration under sub-section (1) of section 84, any person authorized by the State Bank in this behalf may enter and search any premises and seize such moneys, movable properties, shares, securities or title deeds and deposit, or cause to be deposited, the same in accordance with sub-section (1).

(3) Until such time as an official liquidator, official assignee, interim receiver or official receiver, as the case may, be appointed by the Court on an application made under section 88, takes over the possession, custody or control of any books, documents, records and assets of a defaulting person in respect of which or whom a declaration under sub-section (1) of section 84 has been made, including any actionable claims to which such defaulting person is, or appears to be, entitled, the chief executive, by whatever name called, and a director, manager, officer, employee and agent of such defaulting person, and every other person who may have in or under his possession, custody or control of such books documents, records, assets or claims, shall preserve and aid in preserving, such books, documents, records, assets and claims and shall without prejudice to any other liability that he may incur, be jointly and severally liable for any loss or damage .

(4) Every person who is, or becomes indebted in any manner to a defaulting person in respect of which or whom a declaration under sub-section (1) of section 84 has been made shall during the period between the date on which such declaration is published and the date on which an order for winding up or an order of adjudication, as the case may be, is made by the court, repay the amount of the debt by depositing it in the manner provided for in sub-section (1) and inform the State Bank in writing of his having done so.

(5) In computing the period prescribed by the Limitation Act, 1908 for any suit, appeal or application in respect of anything arising from actions which, immediately

before the coming into force of this Act were pending against a defaulting person in respect of which or whom a declaration under sub-section (1) of section 84 has been made, or in respect of any action to the filing of which the defaulting person may be entitled, the period commencing on the publication of such declaration and ending on the day on which an order for winding up or, as the case may be, an order for adjudication is made by the Court shall be excluded.

**87. Statement of assets and liabilities to be submitted to State Bank.**

Within three days of the publication of a declaration under sub-section (1) of section 84 in respect of a defaulting person, or within such further time as the State Bank may by order in writing allow, the chief executive, by whatever name called, and every director, manager, officer, and agent of the defaulting person, and every partner of the firm and the manager, officer and agent of the defaulting person, and every other person having a claim or liability against or towards the defaulting person, shall submit to the State Bank a statement showing the assets and liabilities of the person so far as may be known to him.

**88. Consequential provisions for winding up, etc.**

(1) Where the declaration made under sub-section (1) of section 84 is in respect of a person other than an individual or a company, such person shall, irrespective of the number of members of which it consists, be deemed to be an unregistered company which may be wound up under Part XIII of the Companies Ordinance, 1984.

(2) Where the person in respect of which a declaration has been made under sub-section (1) of section 84 is a company or an unregistered company, the High Court shall, upon an application made by the State Bank within seven days of the publication of the declaration in pursuance of sub-section (2) of Section 84, or within such further time as the Federal Government may allow, make an order for the winding up of the company or the unregistered company.

(3) Notwithstanding anything contained in the Provincial Insolvency Act, 1920 (V of 1920), and the Insolvency (Karachi Division) Act (III of 1909), a declaration made under sub-section (1) of section 84 in respect of an individual shall constitute an effective ground for adjudging the individual an insolvent and the court competent to adjudge him an insolvent shall, upon an application made by the State Bank within seven days of the publication of the declaration in pursuance of sub-section (2) of section 84, or such further time as the Federal Government may allow, pass an order of adjudication against such individual without further proof and follow thereafter the provisions of the Provincial Insolvency Act, 1920 (V of 1920) or, as the case may be, the Insolvency (Karachi Division) Act (III of 1909), for the administration and distribution of the property of the insolvent:

Provided that the court shall not have the power to subsequently annul the adjudication or accept any composition or scheme or arrangement.

**89. Obstruction to exercise of powers by authorized person.**

- (1) No person shall-
- (a) refuse any person authorized by the State Bank under section 82 or receiver appointed under section 83 (hereinafter to be referred to as “authorized person”), access to any premises or part thereof, or fail to submit to the search of his person;
  - (b) assault, obstruct, hinder or delay any authorized person in effecting any entrance which he is entitled to effect;
  - (c) fail to comply with any lawful demands of any authorized person in the exercise of his duties under this part;
  - (d) refuse to give to an authorized person any information which may reasonably be required of him and which he has it in his power to give;
  - (e) fail to produce to, or conceal or attempt to conceal from, an authorized person, any property, book, other document, or article in relation to which the investigating officer has reasonable grounds for suspecting that an offence has been or is being committed under this Act;
  - (f) rescue or endeavor to rescue any thing which has been duly seized;
  - (g) furnish to an authorized person as true, information which he knows or has reason to believe to be false; or
  - (h) before or after any seizure, break or otherwise destroy any thing to prevent the seizure thereof, or the securing of the same.

(2) Where an authorized person examines on oath under paragraph (d) of section 82, the record of an examination or a written statement on oath or affirmation made pursuant or any property’s book, other document, article or thing produced in the course of an examination or under a written statement on oath or affirmation shall, notwithstanding any law or rule of law to the contrary, be admissible in evidence in any proceedings in any court-

- (a) for, or in relation to, an offence under this Act or;
- (b) for, or in relation to, any other matter under this Act; or
- (c) for, or in relation to, any offence under any other written law,

regardless whether such proceedings are against the person who was examined, or who produced the property, book, other document, article or thing, or who made the written statement on oath or affirmation, or against any other person.

## PART IX

### INFORMATION AND SECRECY

#### **90. Power of State Bank to collect, publish and furnish credit information.**

(1) Every bank/ financial institution shall furnish to the State Bank credit information in such manner and at such intervals as the State Bank may specify in regulations made by it and may, either on its own or at the request of any bank, make such information available to the bank or another bank on payment of such fee as the State Bank may specify from time to time:

(2) Any credit information furnished by the State Bank to a bank under sub-section (1) shall be treated as confidential and shall not, except for the purposes of this section or with the prior permission of the State Bank, be published or otherwise disclosed except to the borrower.

(3) The information furnished under sub-section (1) may be consolidated by the State Bank to determine, at a minimum, the total indebtedness and payment performance of each customer of a bank which may then be provided to each bank under sub-section (2) for internal control and monitoring purposes of the bank and to monitor the exposure of the banking system to credit facilities and non-performing loans.

(4) No court, tribunal or other authority, including an officer of the Government, shall require the State Bank or any bank to disclose any information furnished to, or supplied by, the State Bank under this section.

(5) For the purposes of this section-

(a) “borrower” means any person to whom any credit limit has been granted by any bank, whether disbursed or not, and includes—

- (i) in the case of a company or corporation, its subsidiaries;
  - (ii) in the case of a Hindu undivided family, any member thereof or any firm in which such member is a partner;
  - (iii) in the case of a firm, any partner thereof or any other firm in which such partner is a partner; and
  - (iv) in the case of an individual, any firm in which such individual is a partner; and
- (b) “credit information” means any information relating to—
- (i) the amounts and the nature of loans or advances or other credit facilities, including bills purchased or discounted, letters of credit and guarantees, indemnities and other engagements extended by a bank to any borrower or class of borrowers;
  - (ii) the nature of security taken from any borrower for credit facilities granted to him;
  - (iii) the guarantees, indemnities or other engagements furnished to a licensed bank by any of its customers; and
  - (iv) operations or accounts in respect of loans, advances and other credit facilities referred to in this section.

**91. Bank secrecy.**

(1) Except as provided under section 90 and sub-section (3), and without prejudice to the powers of supervision, inspection and investigation of the State Bank conferred under this Act, nothing in this Act shall authorize the Federal Government or Provincial Government or any governmental authority, body or agency to direct the State Bank to inquire specifically into the affairs of any individual customer of a bank.

(2) Subject to sub-section (3), no director, chief executive or officer of a bank, whether during his tenure of office or during his employment, or thereafter, and no person who for any reason, has by any means access to any record, register, correspondence, or other document whatsoever relating to the affairs or account of any particular customer of a bank, shall, give, divulge, reveal or other-wise disclose any information relating to the affairs of such customer.

(3) The provisions of sub-section (2) shall not apply to—

- (a) the statements prepared by a bank in such form and manner as the State Bank may specify in respect of written off loans or any other financial relief to a person as well as the provision, if any, made for bad or doubtful debts, that is reflected in the balance sheet and profit and loss accounts of the bank;
- (b) the exchange of information amongst banks, either directly or through any other credit information bureau authorized by the State Bank, for the purpose of credit assessment of any customer or prospective customer;
- (c) the information for which, the customer, or his authorized representative, has given permission in writing to disclose;
- (d) a case where the customer is declared bankrupt, or, if the customer is a company or enterprise, the company or enterprise is being or has been wound up in Pakistan or in any country, territory or place outside Pakistan;
- (e) where a customer of a bank has died, whether testate or intestate, and the information is required by his appointed personal representative or any person entitled to letters of administration or succession certificate solely in connection with an application for a grant of probate or letters of administration or succession certificate;
- (f) for the purposes of any criminal proceedings or in respect of any civil proceedings-
  - (i) between a bank and its customer or his guarantor relating the customer's transaction with the bank ; or
  - (ii) between the bank and two or more parties making adverse claims to money in a customer's account where the bank seeks relief by way of interpleader;
- (g) where the bank has been served a garnishee order attaching monies in the account of the customer;
- (h) any information provided to a credit bureau, or to an agent appointed, by the bank with the prior written approval of the State Bank;
  - (i) information that relates solely to-
  - (i) credit facilities granted by a branch of a foreign bank;

- (ii) foreign exchange, money market or other transactions between the branch in Pakistan of a foreign bank and other companies or financial institutions, in or outside Pakistan,

and the information is required by its head office;

- (j) any information or document which at the time of disclosure is or has already been made lawfully available to the public from any source other than the bank, or to information which is in the form of a summary or collection of information set out in such manner as does not enable information relating to any particular bank or any customer of the bank to be ascertained;
- (k) any information or documents that is disclosed to the State Bank, or to any of its directors, officers or employees or to any person authorized by the State Bank, where such disclosure is for the purpose of the exercise of powers, performance of functions or the discharge of duties of the State Bank, or of the directors, officers or employees, or of the authorized person;
- (l) the information provided to any authority authorized by law to have jurisdiction over anti money laundering or funding of terrorism; and
- (m) any information provided in accordance with practice and usage customary among bankers, necessary or appropriate for a bank to divulge such information.

(4) In any civil proceedings under clause (f) of sub-section (3) where any information or document is likely to be disclosed in relation to a customer's account, such proceedings may, if the court, of its own motion, or on the application of a party to the proceedings, so orders, be held in camera and in such case, the information or document shall be secret as between the court and the parties thereto, and no such party shall disclose such information or document to any other person.

## 92. **Prohibited disclosure through publication**

Unless the court otherwise orders, no person shall publish the name, address or photograph of any parties to civil proceedings as are referred to in clause (f) sub-section (3) of section 91, or any information likely to lead to the identification of the parties thereto, either during the currency of the proceedings or at any time after they have been concluded.

## **PART X**

### **CORRECTIVE ACTIONS AND BANK RESOLUTION MEASURES**

**93. Power of the State Bank to take corrective actions and institute bank resolution measures.**

(1) The State Bank shall have the power to take any of the corrective actions as provided under this Part when any of the circumstances referred to in sub-section (1) of section 94 exists, and institute bank resolution measures in accordance with the provisions of this Part as it deems necessary, and every person in respect to which or to whom the corrective action or bank resolution measures apply shall comply with and give full effect to the direction, order and any other requirement of the State Bank under this Act.

(2) Any reference in this Part to a “bank” shall be read as including a reference to-

- (a) an associate company or associated undertaking or subsidiary of such bank; and
- (b) a person controlled by a director or directors of the bank or by persons acting in concert with a director or directors of a bank:

Provided that nothing in this Part shall apply to an associated company or associated undertaking or subsidiary of a foreign bank, where the associated company or associated undertaking or subsidiary is established outside Pakistan and is not carrying a business in Pakistan.

**94. Circumstances under which corrective actions may be taken by the State Bank.**

(1) Subject to sub-section (2), where-

- (a) a bank informs the State Bank that it is insolvent or that it is likely to become unable to meet all or any of its obligations to a material extent or that it is about to suspend payment to any extent under section 75; or

(b) where after an inspection under Section 76, or otherwise howsoever, the State Bank is satisfied that a bank-

- (i) is carrying on its business in a manner detrimental to the interests of its depositors, creditors or the public generally;
- (ii) is not paying its financial obligations as they fall due;

- (iii) has become or is likely to become unable to meet all or any of its obligations to a material extent, or is about to suspend payment to any extent;
- (iv) has contravened any provisions of this Act or any restrictions or condition imposed on its license, or any provisions of any law, regardless that there has been no prosecution in respect thereof;
- (v) has obtained its license on the ground of false or fraudulent statements made by it in connection with the license application;
- (vi) has associated any director, chief executive or an officer of a bank whose association is or is likely to be detrimental to the interests of the bank or its depositors or otherwise undesirable;
- (vii) has created hindrance to the State Bank in supervising its affairs under this Act because all or a significant part of the administration, operation and books or records of the bank have been willfully destroyed, concealed or moved outside of Pakistan without the prior approval of the State Bank;
- (viii) has failed to carry out any direction given to it by the State Bank;
- (ix) has less than the minimum capital required by or under this Act;
- (x) is insolvent and the value of total assets is less than the value of total liabilities;
- (xi) is facing a petition or legal action for relief by a custodian, receiver or liquidator under any liquidation law or other law that provides for relief of debtors or which relates to debtors;
- (xii) has engaged in or been used for criminal activities and the bank has not taken measures adequate to ensure that if the bank is not and will not engage in or be used for future criminal activities;
- (xiii) consist of one or more foreign banks or financial institutions which have gone into voluntary liquidation, or in respect of which a custodian, receiver or liquidator has been appointed, or whose license to carry on banking business in the country of its origin has been cancelled; or
- (xiv) is otherwise in a situation or circumstance which in the opinion of the State Bank may materially impair the ability of the bank to make payments, meet its obligations or otherwise continue its operations,

the State Bank shall issue a warning notice to the bank under section 95.

(2) Notwithstanding the provisions of sub-section (1), where the State Bank determines that the giving of a warning notice under section 95 would jeopardize the interest of depositors or creditors, or prejudice the interests of the bank, the State Bank may proceed to take any of the corrective actions under section 96 without giving a warning notice to the bank.

**95. Warning notice to be issued by State Bank.**

(1) Subject to sub-section (2) of section 94, where the State Bank has made a determination that any of the circumstances described in section 94 exists in respect of a bank, the State Bank shall notify the bank in writing of its determination and issue a warning notice to the bank.

(2) Upon being served a notice under sub-section (1), the bank shall, unless lesser period is specified by State Bank, within a period of four weeks of its receipt, submit to the State Bank a plan of action and commitment duly approved by the Board of Directors. The plan of action shall address all the weaknesses or lapses indicated in the warning notice issued.”

(3) A plan of action referred to in sub-section (2) shall-

- (i) give details of the package of remedial measures which the bank would take to address the underlying weaknesses or lapses in the bank;
- (ii) be approved by the Board of Directors of the bank concerned;
- (iii) specify the timeframe within which the weaknesses or lapses would be satisfactorily addressed; and
- (iv) explain the monitoring mechanisms for the implementation of the remedial measures.
- “(v) give details of any other steps as may be required by the State Bank in the warning notice

(4) A bank which has submitted a plan of action to the State Bank shall submit to the State Bank such updates or other reports as the State Bank may require.

(5) If a bank fails to submit a plan of action as required under sub-section (2) within the specified time or if the State Bank determines that the plan of action submitted by the bank is inadequate, or if the bank fails to implement the plan following its submission under sub-section (2), the State Bank may take any actions specified under section 96.

**96. Power of State Bank to ensure prompt corrective actions**

(1) Without prejudice to the generality of section 93, the State Bank may take one or more of the following actions against a bank under sub-section (2) of section 94 or in respect of which a notice has been issued under sub-section (1) of section 95:

- (a) caution or prohibit banks generally or any bank in particular against entering into any particular transaction or class of transactions;
- (b) direct the bank to cease and desist from any unsafe or unsound practice or contravention;
- (c) require the bank to take appropriate action as may be directed by the State Bank;
- (d) during the course, or after the completion, of any inspection of a bank under section 76, on such terms and conditions as may be specified by the State Bank-
  - (i) require the bank to call a meeting of its directors for the purpose of considering any matter relating to or arising out of the affairs of the bank, or require an officer of the bank to discuss any such matter with an officer of the State Bank;
  - (ii) depute one or more of the officers of the State Bank to watch the proceedings at any meeting of the Board of Directors of the bank or of any committee or of any other body constituted by it;
  - (iii) require the bank to give an opportunity to the officers so deputed under sub- clause (ii) to be heard at such meetings and also require the bank to send a report of such proceedings to the State Bank;
  - (iv) require the Board of Directors of the bank or any committee or any other body constituted by it to give in writing to any officer specified by the State Bank in this behalf at his usual address all notices of, and other communications relating to, any meeting of the Board, committee or other body constituted by it;
  - (v) appoint one or more of the officers of the State Bank to observe the manner in which the affairs of the bank or of its offices or branches are being conducted and make a report thereon; or
  - (vi) require the bank to make, within such time as may be specified, such changes in the management which are considered appropriate relating to the state of affairs of the bank

- (e) require the bank to increase its paid up capital either through the issue of new shares or by way of issue of bonus shares;
- (f) require the bank to maintain higher capital adequacy or liquidity ratios or place other restrictions or conditions on the business conducted by the bank;
- (g) suspend or reduce in whole or part of shareholders' rights, including voting rights, in the bank;
- (h) prohibit the distribution of profits or other withdrawals by shareholders of the bank;
- (i) limit the compensation (including management fees, bonuses and other perks) paid to directors and officers of the bank;
- (j) prohibit or impose limitations on the acceptance of deposits and the granting of loans or advances or the making of investments by the bank;
- (k) require the bank to enhance its governance, internal controls and risk management systems;
- (l) require the downsizing of operations and sale of assets, restrict the expansion of branches or offices or the closing of branches or offices in Pakistan or abroad, of the bank;
- (m) enhance provisioning for assets of classified quality and for those that are not represented in the accounts at fair value;
- (n) prohibit principal or other payments on subordinated debt provided by the shareholders of the bank; or
- (o) notwithstanding the provision of the Companies Ordinance, 1984 or any other law and without prejudice to section 43, the State Bank may by order in writing remove from office any officer or person acting for or on behalf of the bank;
- (p) notwithstanding the provisions of the Companies Ordinance, 1984 and any other law, by order in writing made by the State Bank, supersede the Board of Directors and take control of the bank and operate its business through the appointment of any person, selected by the State Bank hereinafter referred to as "Administrator" as being appropriate to manage the business of the bank for the period specified in the order ;
- (q) notwithstanding the provision of any other law, by order in writing made by

the State Bank, require the bank to apply for de-listing from any stock exchange on which it is listed; and

- (r) where the State Bank has determined that any income earned by a bank that is subject to the provisions of Part IV is not in accordance with Shariah, direct the bank to credit such income into any charity fund in such manner and under such terms as may be specified in the regulations made by the State Bank.
- (s) require the bank to initiate winding up of any subsidiary, operations of which have a bearing on the bank's performance if the circumstances so warrant

(2) An order or requirement shall only be made under clause (o), (p) and (q) of sub-section (1) after the affected persons have been given a reasonable opportunity to make representations to the State Bank against, or otherwise in respect of, the proposed order:

Provided that if in the opinion of the State Bank, it is apprehended that any delay in making order under clause (o), clause (p) and clause (q) of sub-section (1), any delay would be detrimental to the interests of the bank, or its depositors, creditors or the public generally, the order may be made immediately and the opportunity to make representations against or otherwise in relation to the order shall, in such case, be given as soon as possible after the order has been made, and the order may, in consequence of such representations either be confirmed, or be modified, amended, altered, varied or replaced or be revoked subject to such conditions, if any, as the State Bank may specify.

(3) A bank in respect of which an order is issued under clause (p) of sub-section (1) shall bear all expenses incurred while managed by an Administrator appointed by the State Bank.

(4) An order made under clause (p) of sub-section (1) shall be valid for a period not exceeding 2 years unless extended by subsequent order issued by the State Bank.

(5) No order or requirement under clause (o), (p) or (q) of sub-section (1) shall be made except by the Governor of the State Bank on a report by a standing committee set up by the State Bank for this purpose.

(6) Any person affected by an order or requirement referred to in sub-section (5) may make an appeal to the Central Board of Directors of the State Bank whose decision shall be final.

(7) The State Bank shall provide an initial report to Federal Government as soon as practicable after the control of a bank has been taken over by an Administrator appointed under clause (p) of sub-section (1) and a yearly report thereafter.

(8) Any person removed from office under clause (o) of sub-section (1) shall cease to hold the office from which he is removed with effect from the date set out in the order and shall not thereafter hold any other office whatsoever in that bank, in any other bank or entity specified in section 3 or any microfinance bank, in any manner, whether directly or indirectly, be concerned with, or take part, or engage in, any activity, affairs or business whatsoever of or in relation to that bank or any other bank / DFI.

(9) The removal of any person under clause (o) of sub-section (1) shall be lawful and valid notwithstanding anything contained in any contract of service or other contract or agreement, whether express or implied, whether individual or collective, and whether or not made or provided for under any law or regulation and any person so removed from office shall not be entitled to claim any compensation for the loss or termination of office.

(10) For the purposes of this Part, the capital of a bank shall be determined in accordance with standards and procedures may be specified in the regulations made by the State Bank; and the value of the assets and liabilities of a bank shall be determined in accordance with valuation standards and procedures specified in the regulations made by the State Bank.

#### **97. Effect of taking control.**

(1) Where an order has been made under clause (p) of sub-section (1) of section 96, the bank and its directors, chief executive and officers shall submit the property, business and affairs of the bank to the control of the Administrator, and shall provide the Administrator appointed with all such facilities as may be required to carry on the business and to manage affairs of the bank.

(2) Where an order has been made under clause (p) of sub-section (1) of section 96, the Administrator shall assume control of the property, business and affairs of the bank concerned, and carry on the business and should manage affairs of that bank in the name and on behalf of that bank, for such time as may be specified in the order or until such time when the order is revoked.

(3) Throughout the period of control as specified in the order made under clause (p) of sub-section 3 (1) of section 96 there shall be vested in the Administrator, all the powers of the bank, and of its directors, under the constituent documents or memorandum or articles of the bank, or exercisable by the bank or its directors under any law, or otherwise howsoever, regardless of whether such powers are exercisable by resolution, special resolution, or in any other manner whatsoever.

(4) During the period that an order under clause (p) of sub-section (1) of section 96 is in force, no director, chief executive or officer of a bank to which the order relates shall, either directly or indirectly, engage in any activity in relation to the bank, except as may be required or authorized by the Administrator and no remuneration of whatever nature shall accrue or be payable to such director, chief executive or officer of

the bank, except such as may be approved in writing by the Administrator in relation to any activity required or authorized by the Administrator, as the case may be.

Provided that the remuneration to be paid to any director or chief executive or officer of the bank shall be commensurate with the activity for which such person is engaged.

**98. Powers of Administrator to take Remedial Measures.**

An Administrator appointed under clause (p) of sub-section (1) of section 96, may, with the approval of the State Bank, and notwithstanding any provisions of the Companies Ordinance, 1984 or any other law, take any one or more of the following measures for the purpose of carrying out the rehabilitation of the bank—

- (a) suspend, terminate or wind up any part of the bank's activities in or outside Pakistan in accordance with the provisions of this Act;
- (b) sell the assets of the bank to any other bank or entity on such terms and conditions as may be approved by the State Bank;
- (c) terminate the employment of any officer or employee of the bank, or replace any officer and employee, of the bank;
- (d) prepare an amalgamation or merger scheme for approval of the State Bank to merge the bank with another bank;
- (e) re-organize the bank by increasing its capital and selling shares to new shareholders and reconstituting the Board of Directors of the bank in accordance with the provisions of this Act;
- (f) re-construct the bank in any such manner as the Administrator considers to be in the interest of depositors, including the closing down of businesses that are not viable or re-organizing its management; or
- (g) take any such other measures as may be approved by the State Bank to rehabilitate the bank.

Provided that the Administrator shall prepare scheme of reorganization, reconstruction, amalgamation, sale of assets or winding up or any other resolution measure within sixty days of his appointment.

**99. Other measures available to the State Bank.**

(1) The State Bank shall, within one year of placing a bank under the control of an Administrator appointed under clause (p) of sub-section (1) of section 96, audit or cause to be audited the accounts of the bank concerned and publish a report thereof.

(2) Whether or not an order has been issued under clause (p) of sub-section (1) of section 96, and notwithstanding the provisions of the Companies Ordinance, 1984 and any other law, the State Bank may take any one or more of the following actions with regard to a bank-

- (a) release the suspension of the Board of Directors of the bank made under clause (p) of sub-section (1) of section 96 and reinstate the same Board of Directors to manage the business of the bank;
- (b) dismiss the Board of Directors of the bank and direct the convening of a general meeting of the bank to elect a new Board of Directors and to have the business of the bank managed by the new Board of Directors;
- (c) in accordance with section 101, carry out a capital reduction exercise and cancel any portion of the shares of the bank which is depleted or unrepresented by available assets;
- (d) dilute the participation of the existing shareholders by issuing shares to such persons and at such consideration as may be determined by the State Bank; or
- (e) file an application in the High Court under Part XI for the liquidation of the bank.

(3) Without prejudice to the powers conferred on the State Bank under section 96 or sub-section (2), the State Bank may by notification-

- (a) direct any shareholder of the bank to divest or transfer the shares owned by him, to a fit and proper person approved by the State Bank on payment by such person of such payment as may be determined by the State Bank;
- (b) transfer any assets or liabilities, in whole or part, from the bank to another bank or other interested parties, on such terms and conditions as may be determined by the State Bank;
- (c) subject to section 102, vest all or part of the assets and liabilities of the bank in another bank or such other person, as may be considered appropriate by the State Bank; and
- (d) establish a new bank to be capitalized by the Federal Government to acquire the assets and liabilities of the bank.

(4) In deciding on the appropriate action to be taken under subsection (2) or sub-section (3), the State Bank shall have due consideration to the latest audited report of

the bank and any report prepared by the Administrator appointed under clause (p) of subsection (1) of section 96.

(5) No action under sub-section (2) or sub-section (3) shall be made unless the bank in respect of which the action is to be taken has been given a reasonable opportunity to make representations to the State Bank against, or otherwise in respect of, the proposed order:

Provided that if in the opinion of the State Bank, in the case of an action to be taken by the State Bank under subsection (2) or sub-section (3), any delay would be detrimental to the interests of the bank, or its depositors, creditors or the public generally, the action may be taken immediately and the opportunity to make representations against or otherwise in relation to the action shall, in such case, be given as soon as possible after the action has been taken, and the action may, in consequence of such representations either be confirmed, or be modified, amended, altered, varied or replaced or be revoked subject to such conditions, if any, as the State Bank may specify.

(6) The State Bank may for the purposes of this section, disclose information relating to the bank or to its assets and liabilities or operations, to any potential acquirer provided that the recipients of such information will hold it in confidence and only use it for the purpose of determining whether or not to acquire the shares or assets of the bank concerned.

#### **100. Shareholder Representations.**

(1) Without prejudice to sub-section (2) of section 96, for the purposes of this Part, only the Owners' Representative of a bank appointed under sub-section (2) may make representations to the State Bank against any action taken by the State Bank where the order relates to shareholders.

(2) For the purposes of this section, the shareholders of a bank shall be represented by a representative (in this section referred to as the 'Owners' Representative') who shall be –

- (a) the person appointed by a decision taken by a simple majority vote of the owners of the bank and which is notified in writing to the State Bank, or
- (b) the person holding for the time being the office of Chairman of the Board of Directors of the bank or his duly authorized representative.

(3) Within fourteen days from the date of service of an order made by the State Bank under sub-section (2) or sub-section (3) of section 99, the Owners' Representative may make representations in writing to the State Bank against the decision taken with reasons why the action should not be taken.

(4) The Owners' Representative shall be deemed to have consented to the decision taken if the State Bank does not receive the objection on time.

(5) The State Bank shall within fourteen days of the receipt of representations made by the Owners' Representative review the objections and may either confirm, modify or terminate the order as it considers appropriate giving the grounds for its decision.

(6) The decision of the State Bank shall be served promptly on the Owners' Representative of the bank.

(7) All action taken by the State Bank shall remain in full force and effect during such period unless or until otherwise terminated by the State Bank.

(8) The order confirmed, modified or terminated by the State Bank shall be final and conclusive.

#### **101. Capital reduction and cancellation of shares.**

(1) Notwithstanding anything in the Companies Ordinance, 1984 and any other law, or the constituent documents or memorandum and articles of association of a bank, where the paid-up capital of such bank has been depleted or is un-represented by available assets, the State Bank may, with the approval of the Federal Government, and on notice being published in two daily newspaper, order the reduction of the share capital of the bank by canceling such portion of its paid-up capital that has been depleted or un-represented by available assets.

(2) Notwithstanding anything in the Companies Ordinance, 1984 and any other law or the constituent documents or memorandum and articles of association of the bank, where the assets or liabilities of the bank have been transferred to another person under clause (b) or (d) of section 98, the State Bank may, with the concurrence of the Federal Government, and on notice being published in two daily newspaper, order the cancellation of the residual share capital of the bank.

(3) Where the State Bank issues an order under subsection (1) to reduce the share capital of a bank, if on the expiry of thirty days from the date of any call made by the bank on its members to pay on their respective shares, payment on any such shares has not been made, the State Bank may proceed to cancel such shares for which payment has not been made accordingly and in the case of an insolvent bank, write down the share capital to a nominal value of one hundred thousand rupees.

(4) Where the share capital of a bank is reduced pursuant to subsection (1), or any of its shares is cancelled pursuant to subsection (2), the State Bank may require the constituent documents or memorandum and articles of association of the bank to be altered and any necessary amendments in relevant records of the company.

(5) The powers conferred on the State Bank under this section shall be in addition to any powers accessible under section 96 to 107 of the Companies Ordinance, 1984, and where an order is proposed to be made by the State Bank under section (1), the State Bank may exercise any of the powers conferred on the Court under those provisions.

### **102. Vesting of Assets and Liabilities.**

Where all or part of the assets and liabilities of a bank are to be vested or transferred to another bank or enterprise under section 98 or section 99, the State Bank may, by order published through notification, vest or transfer the assets and liabilities specified in the acquiring institution on such terms and conditions as it may consider appropriate.

### **103. Conditions for Vesting.**

- (1) No vesting order shall be made under section 102 unless—
  - (a) the vesting of assets and liabilities of the bank to which an order under section 102 applies (hereinafter referred to as the “transferee institution”) in the acquiring institution is justified by the interests of the depositors and creditors of the transferee institution or the public interest;
  - (b) the acquiring institution is capable of carrying on in a competent manner the business of the bank ; and
  - (c) the acquiring institution agrees in writing to comply with such terms and conditions as may be specified by the State Bank relating to the manner in which the assets to be vested are to be used and any existing liabilities are to be met.

### **104. Effect of Vesting Order.**

- (1) With effect from the relevant date specified in the vesting order made under section 102 —
  - (a) all rights of the transferee institution to the assets vested and all obligations under the liabilities vested shall be deemed to have been transferred to and acquired by the acquiring institution, and notwithstanding the provisions of any other law to the contrary, no other action shall be required to perfect such transfer or acquisition;
  - (b) all entries in all the Official Registers in Pakistan recording assets or liabilities so vested shall be changed by replacing the name of the transferee institution with the name of the acquiring institution, provided

however, that no failure to make such change shall affect any right or obligation transferred and acquired by the acquiring institution under the vesting order;

- (c) the acquiring institution shall comply with the terms and conditions of the vesting that the acquiring institution has consented to in writing and with any such other directions as the State Bank may issue under this Act or the Companies Ordinance, 1984;
  - (d) the license issued to the transferee institution shall be modified to the extent necessary to accommodate the effects of the vesting order on the business of such transferee institution ; and
  - (e) if all assets and liabilities of the transferee institution deriving from both domestic banking business and banking business outside Pakistan are vested in the acquiring institution, the license to the transferee institution shall be cancelled by the State Bank.
- (2) Unless otherwise specified by the State Bank and as may be set out in the vesting order made under section 101, with effect from the relevant date—
- (a) all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature pertaining or relating to the vested assets or liabilities of the transferee institution and subsisting, or having effect on the day immediately preceding the relevant date and to which the transferee institution is a party or which are in favor of the transferee institution , shall be deemed with effect from the relevant date to be contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation or other instruments entered into or granted, as the case may be, by the acquiring institution; and
  - (b) all actions and proceedings of whatever nature instituted by or against the transferee institution pertaining or relating to the vested assets or liabilities of the transferee institution and pending on the day immediately preceding the relevant date, shall be deemed with effect from the relevant date to be actions and proceedings instituted by or against the acquiring institution, and may be continued or prosecuted accordingly.
- (3) For the purposes of this section-
- (a) ‘relevant date’ means the date the vesting order is published in the notification;
  - (b) “ Official Registries” means a registry established under the law of Pakistan that records the creation of interests, ownership, transfers and dealings in properties whether movable or immovable of individuals and

bodies corporate in Pakistan.

**105. Finality of Vesting Order.**

Notwithstanding any other provisions of this Act or any other law to the contrary, an order of the State Bank made under section 102 shall be final and conclusive with effect from the relevant date.

**106. Moratorium.**

(1) In addition to the powers of the State Bank in the foregoing provisions in this Part, the State Bank may, if it considers it to be in the interest of the bank, or if it is necessary to protect the interests of depositors or maintain stability of the banking system, by order published in the notification-

- (a) prohibit any bank from carrying on all its banking business, or such part of it, as may be set out in the order;
- (b) prohibit the bank from doing or performing any act or function connected with all its banking business, or such part of it, as may be set out in the order;
- (c) apply to the High Court for an order staying for a period not exceeding six months the commencement or continuance of all, or any class, category or description of, actions and proceedings of a civil nature by or against the bank with respect to all business, or any class, category or of business, of the bank;
- (d) suspend the license granted to the bank under this Act to such extent and for such period as may be necessary to give effect to the prohibitions under clause (a) or clause (b);or
- (e) provide for all such matters of an incidental, ancillary or consequential nature, or for which it may be otherwise necessary or expedient to provide, in order to give effect to the matters under the foregoing clauses, including provisions for the taking into the custody or control of the State Bank the property, books, documents or effects of the bank.

(2) An order under subsection (1) may, from time to time, be modified, amended, altered, varied or replaced either prospectively, or where it is not impracticable or unjust to do so, retrospectively, by a further order under subsection (1).

(3) An order made under subsection (1), or by virtue of subsection (2), may at any time be revoked by the State Bank and any such order may contain all such orders, directions or provisions of an incidental, ancillary or consequential nature as may be deemed necessary by the State Bank.

**107. Procedure for amalgamation.**—(1) Notwithstanding anything contained in any law for the time being in force, no bank shall be amalgamated with another institution, unless a scheme containing the terms of such amalgamation has been placed in draft before the shareholders of each of the institution concerned separately, and approved by a resolution passed by a majority in number representing at least fifty one percent in value of the shareholders of each of the said institutions, present either in person or by proxy at a meeting called for the purpose.

(2) Notice of every such meeting as is referred to in sub-section (1) shall be given to every shareholder of each of the institution concerned in accordance with the relevant articles of association, indicating the time, place and object of the meeting, and shall also be published at least once a week for three consecutive weeks in not less than two newspapers which circulate in the locality or localities where the registered offices of the Institutions concerned are situated, one of such newspapers being in a language commonly understood in the locality or localities.

(3) Any shareholder, who has voted against the scheme, of amalgamation at the meeting or has given notice in writing at or prior to the meeting to the institution concerned or the presiding officer of the meeting that he dissents from the scheme of amalgamation, shall be entitled, in the event of the scheme being sanctioned by the State Bank to claim from the institution being amalgamated, in respect of the shares held by him in that institution, their value as determined by the State Bank when sanctioning the scheme and such determination by the State Bank as to the value of the shares to be paid to dissenting shareholder shall be final for all purposes.

(4) If the scheme of amalgamation is approved by the requisite majority of shareholders in accordance with the provisions of this section, it shall be submitted to the State Bank for sanction and shall, if sanctioned by the State Bank by an order in writing passed in this behalf shall be binding on the institutions concerned and also on all the shareholders thereof;

Provided that in case of foreign companies, notwithstanding the fact that a meeting of the shareholders has not been so called, such sanction may be granted by the State Bank, upon a certificate issued by their respective head offices, approving the scheme.

(5) Where a scheme of amalgamation is sanctioned by the State Bank under the provisions of this section, the State Bank shall transmit a copy of the order sanctioning the scheme to the registrar before whom the institutions concerned have been registered and the registrar shall, on receipt of any such order, strike off the name of the institution (hereinafter in this section referred to as the amalgamated institution) which by reason of the amalgamation will cease to function.

(6) On the sanctioning of scheme of amalgamation by the State Bank, the property of the amalgamated institution shall, by virtue of the order of sanction, be transferred to and vest in, and the liabilities of the said institution shall, by virtue of the said order be

transferred to and become the liabilities of the institution which under the scheme of amalgamation is to acquire the business of the amalgamated institution, subject in all cases to the terms of the order sanctioning the scheme.

7) In this section “institution” means any bank and includes branch of foreign bank and any other financial institution under the supervisory jurisdiction of State Bank or Securities and Exchange Commission of Pakistan.

(8) The requirements of shareholders approval shall not apply when amalgamation is instituted by State Bank to safeguard the financial interests of depositors from being wiped out due to troubled conditions of an institution or institutions. No court shall grant injunction or set aside the amalgamation instituted or finalized by State bank under the foregoing circumstances or allow any other relief except monetary compensation.

**PART XI**  
**LIQUIDATION**

**SUB-PART- 1.       Liquidation of a Bank.**

**108.   General**

The provisions of the Companies Ordinance, 1984 shall not, unless otherwise specified in this Part, apply to the winding-up and liquidation of a bank.

**109.   State Bank’s permission required for the winding-up and liquidation of a bank.**

(1)   No person shall petition for the winding –up and liquidation of a bank in any court of law, without the written approval of the State Bank.

(2)   Notwithstanding the provisions of any other law and subject to the provisions of this Part, no court or tribunal of Pakistan, other than the High Court, shall entertain any action or petition brought by a bank for relief from payment of its obligations, or against a bank for a winding-up order, and no such court or tribunal shall appoint a custodian, receiver or liquidator for a bank.

(3)   An approval under subsection (1) shall not be granted if the State Bank is satisfied -

- (a)   that the bank is solvent and has the ability to repay its depositors and other creditors without delay; and
- (b)   that the liquidation of the bank has been approved at a meeting of the shareholders of the bank by an affirmative vote representing not less than three fourths of the outstanding shares entitled to vote,

except that no such approval shall be granted by the State Bank for the winding –up of a domestic bank being a public corporation without the prior written approval by the Federal Government, or for the liquidation of a branch in Pakistan of a foreign bank without the written request by the management of the foreign bank to which the branch belongs.

**110.   Rules of Voluntary Liquidation.**

(1)   Before the State Bank grants an approval to any person including a bank seeking voluntary liquidation, it shall ensure that the bank that is the subject matter of the petition for winding-up or liquidation (hereinafter referred to as “the incumbent bank” has -

- (a) repaid first its depositors, paid all financial liabilities or obligations incurred under this Act and returned all funds and other property held by it in a fiduciary capacity, under bailment or as lessor of a safe deposit box to the persons entitled to possession of such funds and property; and
  - (b) and in the case of a bank seeking to petition for voluntary winding -up or liquidation, in addition to the requirements in clause (a), it has-
    - (i) immediately ceased to carry on the business to be liquidated, exercising only such powers as are necessary to effect an orderly liquidation; and
    - (ii) wound- up all operations undertaken.
- (2) The State Bank may request for reports, documents and such other information concerning the person seeking the approval and the incumbent bank, including its winding –up and liquidation plan.
- (3) The State Bank may issue such directions as it deems fit to any person seeking the approval of the State Bank and the incumbent bank to ensure that the requirements in subsection (2) are met.
- (4) Upon the issuance of the approval under subsection (1), the State Bank shall cancel the license of the incumbent bank.
- (5) The approval for voluntary liquidation shall not prejudice the rights of a depositor or other creditor of an incumbent bank to payment in full of his claim, or the rights of an owner of funds or other property held by the incumbent bank.
- (6) If the State Bank determines that an incumbent bank is unable to meet or may not be able to meet its financial obligations in Pakistan as they fall due, the State Bank shall proceed to take any actions under Part X or appoint an Administrator under clause (p) of sub-section (1) of section 95.

### **111. Compulsory Liquidation.**

- (1) For the purposes of this Part –
  - (a) the capital of a bank shall be determined in accordance with the standards and procedures specified in regulations made by the State Bank or are otherwise acceptable to the State Bank; and
  - (b) the value of the assets and liabilities of a bank or a branch shall be determined in accordance with valuation standards and procedures specified in regulations by the State Bank or are otherwise acceptable to the State Bank.

(2) A bank may be compulsorily wound up by the State Bank, if one or more of the following grounds exist:

- (a) the bank is not paying its financial obligations in Pakistan as they fall due; or
- (b) the State Bank determines that the capital of the bank is less than one-half of the minimum capital to be maintained by the bank by or under this Act;
- (c) the State Bank determines that the value of the assets of the bank is less than the value of the debts of the bank; or
- (d) the Administrator appointed under clause (p) of sub-section (1) of section 96 recommends that the bank be wound-up.

**112. Representative of Owners in Liquidation Proceedings.**

(1) For the purposes of the procedures set out in this Sub-Part, the shareholders of a bank shall be represented by a representative (hereinafter referred to as the “Owners’ Representative”) who shall be –

- (a) for a domestic bank not being a public corporation, the person holding for the time being the office of Chairman of the Board of Directors of the bank or his duly authorized representative, unless another person is appointed as Owners’ Representative by the Owners of the bank;
- (b) for a domestic bank being a public corporation, Federal Government or his duly authorized representative; and
- (c) for a branch of a foreign bank, the chief executive officer or his deputy of the branch in Pakistan of the foreign bank.

**113. Petition for commencing liquidation proceedings.**

(1) The State Bank may present a petition to the High Court to commence liquidation proceedings against a bank.

(2) No petition for commencing liquidation proceedings against a bank may be granted by the High Court unless the petition is presented together with—

- (a) documentary evidence showing that the bank had been placed under administration and that Administrator had recommended the liquidation of the bank or that the business of the bank in Pakistan has been suspended under section 105; and

- (b) copies of financial statements of the bank certified by the State Bank, or other documentary evidence showing that one or more of the grounds for commencing liquidation proceedings specified in sub-section (2) of section 111 apply.

**114. Rejection of Petition.**

A petition for commencing liquidation proceedings against a bank shall be rejected by the High Court if –

- (a) none of the grounds of subsection (2) of section 109 applies;
- (b) the State Bank opposes the petition on the ground that the requirements under subsection (3) of section 109 are not met;
- (c) the petition is not accompanied by the documents required by subsection (2) of section 111;
- (d) any document or other evidence submitted to the High Court in support of the petition is manifestly false or inaccurate and without such document or other evidence the petition does not meet the requirements of the law;
- (e) the Owners' Representative for the bank shows, with the concurrence of the State Bank, to the satisfaction of the High Court that supplemental payments of capital funds have been made to the bank immediately sufficient to eliminate the grounds for commencing liquidation proceedings against the bank ;
- (f) the petition concerns a domestic bank being a public corporation and the Federal Government presents to the High Court a written guarantee of the Federal Government for the due payment of all liabilities of the bank;  
or
- (g) the petition does not meet any other requirement of the this Act.

**115. Rejection of Frivolous Petition.**

At any time after the filing of a petition for commencing liquidation proceedings against a bank, the High Court may reject any petition with or without a hearing, on the ground that the petition is frivolous, in which case the High Court may award costs and damages to the State Bank and the bank resulting from the filing of the petition.

**116. Appointment of Liquidator.**

(1) Upon an application made by the State Bank to commence liquidation proceedings under subsection (1) of section 113 against a bank, the High Court shall appoint the State Bank or a person or persons nominated by the State Bank to act as a liquidator of the bank (hereinafter referred to as the “Liquidator”).

(2) In this Part, a bank against which liquidation proceedings have been commenced may be referred to as “bank in liquidation.”

**117. Terms and Conditions of Service of Liquidator.**

(1) The decision of the High Court appointing a Liquidator shall specify the remuneration and the other terms and conditions of his employment.

(2) The remuneration and other costs incurred on account of the Liquidator shall be paid from the assets of the bank in liquidation.

(3) The Liquidator shall carry out his activities under the direction and supervision of the High Court in close consultation with the State Bank.

(4) The High Court shall provide the Liquidator with written directions including a list of activities which the Liquidator may undertake and the Liquidator may at any time apply to the High Court for directions where specifically required to do so by or under this Act.

(5) Upon the resignation, death or incapacity to act as liquidator, a person appointed by the State Bank shall temporarily assume the position of the Liquidator and exercise all the powers of the Liquidator until a successor liquidator is appointed by the High Court, upon the application of the State Bank.

(6) Whenever a Liquidator is replaced, the person replacing the Liquidator shall succeed to all the powers of the Liquidator, and the books, records and remaining assets of the bank in liquidation in the custody of the Liquidator or the State Bank as well as the books and records of the Liquidator shall be promptly transferred into the custody of that person.

(7) The State Bank shall indemnify the Liquidator for all liabilities and all reasonable costs and expenses incurred by the Liquidator on account of the liquidation to the extent that the available assets of the bank in liquidation are insufficient to meet such liabilities, costs and expenses.

### **118. Duties and Powers of Liquidator.**

(1) Immediately upon his appointment by the High Court, the Liquidator shall take charge of the offices, books, records and assets of the bank and direct the liquidation proceedings in accordance with this Act.

(2) Upon his appointment as a Liquidator for a bank in liquidation, the Liquidator shall become the sole legal representative of the bank, and succeed to all rights and powers of the shareholders of the bank relating to their shares of the bank, the Board of Directors of the bank, and the officers of the bank including all powers necessary or expedient to manage, operate and liquidate the bank and to comply with any order, direction or guideline received from the High Court.

(3) Without limiting the generality of the provisions of subsection (2), the Liquidator may request the High court to vest all or part of the assets and liabilities of the bank in liquidation in another bank in accordance with the provisions of Part X.

(4) The Liquidator may engage the services of any professionally qualified person to assist the Liquidator in the exercise of the Liquidator's functions in the liquidation of a bank under this Part

### **119. Set Off and Netting.**

(1) Nothing in this Act and no decision made under this Act shall prevent or prohibit the set off by operation of law of obligations between a bank in liquidation and its contractual counter parties.

(2) Notwithstanding anything contained in any other law or any agreement, in determining the rights and obligations between a bank in liquidation and its contractual counter parties, effect shall be given to the close-out netting and set off provisions of eligible financial contracts between them.

(3) The net termination value determined in accordance with an eligible financial contract between them shall be a claim of the bank on the counter party or shall be admitted after its registration as a claim of the counter party on the bank.

(4) For the purposes of this section-

“eligible financial contract” means any of the following agreements, namely:

- (a) a currency or interest rate swap agreement;
- (b) a basis swap agreement;
- (c) a spot, future, forward or other foreign exchange agreement;

- (d) an agreement providing for a cap, collar or floor transaction;
- (e) a commodity swap agreement;
- (f) a forward rate agreement;
- (g) a repurchase or reverse repurchase agreement;
- (h) a spot, future, forward or other commodity agreement;
- (i) an agreement to buy, sell, borrow or lend securities, to clear or settle securities transactions or to act as a depository for securities;
- (j) any derivative, combination or option in respect of, or agreement similar to, an agreement referred to in clauses (a) to (i);
- (k) any master agreement in respect to an agreement referred to in clauses (a) to (j);
- (l) any master agreement in respect of a master agreement referred to in clause (k);
- (m) a guarantee of the liabilities under an agreement referred to in subparagraphs (a) to (l); and
- (n) any agreement of a kind prescribed by order published in the notification by the State Bank; and

“net termination value” means the net amount obtained after setting off the mutual obligations between the parties to an eligible financial contract in accordance with its provisions.

(5) Except for irrevocable funds transfer and securities transfer orders entered for the account of a financial institution into a payment or securities settlement system recognized as such by the State Bank, no set off shall be allowed between rights and obligations if one of these has been created or transferred by a legal act of the bank in liquidation which has been or shall be declared null and void by the High Court or which are addressed under the Companies Ordinance, 1984.

(6) Nothing in this section shall affect the nature of obligations or contracts which were entered into in compliance with Shariah principles as notified by State Bank.

## **120. Secured Claims.**

(1) Subject to sub-section (1) of section 121, all assets of a bank in liquidation, including assets securing approved claims of creditors against the bank, and

all assets securing claims of the bank, shall be sold at public auction by the Liquidator, except in the following circumstances:

- (a) securities, foreign currencies and other assets that can be readily sold at market may be sold by the Liquidator in the markets where they are traded;
- (b) securities, foreign currencies and other assets of the bank in liquidation that secure debts of the bank and that can readily be sold at market may be sold by the creditors holding the assets; and
- (c) if the Liquidator determines that no reasonable price can be obtained for assets in a public auction, the High Court may authorize the Liquidator to sell the assets privately.

(2) The assets of a bank in liquidation other than the assets referred to in clause (b) of subsection (1) must be placed at the disposal of the Liquidator promptly upon his request.

#### **121. Priority of Payment.**

(1) Notwithstanding the provision of any law, assets of a bank in liquidation, not being assets securing approved claims of creditors of the bank, shall be used to discharge the approved claims of creditors of the bank in the following order of priority:

- (a) claims on account of deposits that are not in the form of debt securities up to a maximum amount of one hundred thousand Rupees per depositor, or such higher amount as the State Bank, may prescribe from time to time by order published through notification;
- (b) necessary and reasonable expenses incurred by the Liquidator on account of the liquidation which are approved by the State Bank;
- (c) liabilities of the bank in liquidation to the State Bank on account of the suspension of its business, or its administration, management, rehabilitation, vesting or restructuring by or under supervision of the State Bank under this Act;
- (d) taxes, rates and deposits owed to the Government and local authorities by the bank in liquidation;
- (e) other deposits not included under clause (a);
- (f) fees and assessments due to the State Bank;

- (g) other claims to which a priority of payment attaches according to their ranking; and
- (h) other claims not included under clause (g).

(2) In case of banks conducting business in conformity with the provisions of Part IV, first priority shall be given to claims on account of demand deposits of such banks and the claims of remaining creditors shall be treated in accordance with sub-section (1). Further, depositors of a specific pool shall be paid out of assets of that pool in the first place.

(3) If depositors covered under clause (a) of sub-section (1) receive payment of covered amount through any deposit protection scheme, their priority shall be subrogated by such scheme.

(4) In case of depositors of banks authorized under Part IV of this Act, if the loss to depositors has been caused due to fraud, negligence or misconduct of the bank or its management, such loss shall be distributed to shareholders of the bank and the officer or director of the bank found guilty of such fraud, negligence or misconduct shall be responsible to make good that loss.

#### **122. No Recapitalization of Banks in Liquidation with Public Funds.**

No bank in liquidation shall be recapitalized with public funds in whole or in part unless in accordance with the provisions of this Part.

#### **123. Negotiated Settlements.**

With the prior approval of the High Court, the liquidator for a bank in liquidation may enter into and carry out negotiated settlements of claims with any creditor and debtor of the bank in liquidation.

#### **124. No Compromise with Creditors.**

Subject to the provisions of this Part, there shall be no compromise or other arrangement with any creditor or group of creditors concerning a bank in liquidation.

#### **125. General Meeting and Committee of Creditors.**

(1) There shall be no general meeting of creditors concerning a bank in liquidation unless, at the request of the liquidator, the High Court decides that such meeting is desirable to achieve an efficient liquidation of the bank.

(2) There shall be no committee of creditors concerning a bank in liquidation unless, at the request of the liquidator, the High Court decides that such committee is desirable to represent and protect significant interests of one or more classes or groups of creditors.

**126. Immediate Advances to Depositors.**

To the extent that the depositors can be identified and contacted, claims on account of demand deposits with a bank in liquidation shall as soon as possible be paid in advance of any other distribution up to the maximum amount for each depositor specified under clause (a) of section 121; such advance payments shall not be affected by rights of the bank in liquidation to set off obligations between the bank and its contractual counterparties.

**127. Distribution.**

(1) Payments to depositors or other creditors of a bank in liquidation shall be made only for amounts listed in a distribution schedule approved by High Court

(2) At any time, the Liquidator may propose and the High Court may approve a distribution schedule of payments to be made to depositors or other creditors of the bank in liquidation with approved claims.

(3) Each distribution schedule shall rank and combine the payments to be made on approved claims according to their priority of payment and payments for approved claims may be included in a distribution schedule only if –

- (a) all payments due on approved claims of a higher priority ranking than the claims to be included have been made in full under an earlier distribution schedule or can be made in full under this distribution schedule; and
- (b) sufficient funds have been reserved to pay in full all claims that have a higher priority ranking than the claims to be included and that are not yet approved, and to ensure equal treatment of the claims that have a priority ranking equal to the ranking of the claims to be included and that are not yet approved.

(4) If the funds available are insufficient to pay in full all claims of a certain priority ranking, the funds shall be distributed pro-rata among payments on those claims, and no funds shall be allocated to payments on claims of a lower priority ranking unless payment can be made in full on the first mentioned claims.

(5) Immediately after the approval of a distribution schedule by the High Court, the liquidator shall make the payments listed in that distribution schedule.

(6) Amounts included in a distribution schedule that cannot be paid because the creditors cannot be identified or contacted shall be deposited in a special account maintained for that purpose on the books of the State Bank.

(7) The Liquidator shall publish a notice in the *Gazette* and in two newspapers of wide circulation in Pakistan inviting these creditors by name to come forward.

(8) After all disputed claims have been either approved or rejected by the High Court, all possible payments on approved claims under subsection (5) have been made, and all amounts that could not be paid have been deposited under subsection (6), any net proceeds of the liquidation remaining—

- (a) shall be distributed among all shareholders of the bank in liquidation pro rata to the nominal value of their respective share holdings, subject only to preferences among shareholders; or
- (b) shall be paid to the Federal Government, where the bank in liquidation is a domestic bank being a public corporation; or
- (c) shall be paid to a foreign bank, where the bank in liquidation is a branch of that foreign bank.

**128. Cross border insolvency of banks.**

(1) In order to promote equal access of resident and non-resident creditors to a universal pool of assets of a bank in liquidation that engaged in cross border activities:

- (a) if a bank in liquidation has branch offices or representative offices in a foreign country, the State Bank shall co-operate with the authorities of that country;
- (b) if a creditor of a bank in liquidation has received partial payment on his claims in a foreign country, only the balance of his claims may be presented for payment together with costs incurred in the liquidation proceedings before the High Court;
- (c) the High Court shall decide to what extent foreign bankruptcy decisions and other foreign bank resolution measures against banks should be recognized in liquidation proceedings commenced by the High Court against them or concerning their foreign bank branches or other offices in Pakistan; and
- (d) if a foreign bank is in liquidation in the country where its principal place of business is located, the High Court may, at the request of the State Bank, authorize the transfer to the liquidator in that country of such assets

of the foreign bank in Pakistan as the State Bank shall deem advisable and in the interest of the creditors of that foreign bank in Pakistan.

(2) Claims of non-resident creditors of a branch of a foreign bank shall not be recognized for the purpose of the set off or netting of obligations under this Sub-Part and shall not otherwise be admitted in liquidation proceedings commenced against the branch of the foreign bank in Pakistan.

(3) Liquidation proceedings in Pakistan commenced against a branch of a foreign bank shall not limit the rights of creditors of the branch or of the foreign bank to which the branch belongs to pursue in satisfaction of their claims on foreign assets held by the foreign bank outside Pakistan.

## **SUB-PART- II - Special Provisions for Speedy Disposal of Winding Up Proceedings.**

### **129. Part XI to override other Laws.**

The provisions of this Part and the rules made there-under shall have effect notwithstanding anything inconsistent with the provision the Companies Ordinance 1984, or the Code of Civil Procedure, 1908 (Act V of 1908), or the Code of Criminal Procedure, 1898 (Act V of 1898), or any other law for the time being in force or any instrument having effect by virtue of any such law; but the provisions of any such law or instrument in so far as the same are not varied by, or inconsistent with, the provisions of this Part or rules made there under shall apply to all proceedings under this Part.

### **130. Transfer of pending proceedings.**

(1) Where a winding up order is made or has been made in respect of a bank, no suit or other legal proceedings, whether civil or criminal, in respect of which the High Court has jurisdiction under this Act and which is pending in any other court immediately before the coming into force of this Act or the date of the order for the winding up of the bank, whichever is later, shall be proceeded with except in the manner hereinafter provided.

(2) The Liquidator duly appointed under this Part shall, within three months from the date of the winding up order or the coming into force of this Act, whichever is later, or such further time as the High Court may allow, submit to the High Court a report containing a list of all such pending proceedings together with particulars thereof.

(3) On receipt of a report under sub-section (2), the High Court may, if it so thinks fit, give the parties concerned an opportunity to show cause why the proceedings should not be transferred to itself and after making an inquiry in such manner as may be provided by rules made under this Sub-Part, it shall make such order as it deems fit transferring to itself all or such of the pending proceedings as may be specified in the Order and such proceedings shall thereafter be disposed of by the High Court under this part.

(4) If any proceeding pending in a court is not so transferred to the High Court under sub-section (3), such proceeding shall be continued in the court in which the proceeding was pending.

(5) Nothing in this section shall apply to any proceeding pending in appeal before the Supreme Court.

**131. Settlement of list of debtors.**

(1) Notwithstanding anything to the contrary contained in any law for the time being in force, the High Court may settle in the manner hereinafter provided a list of debtors of a bank which is being wound up.

(2) Subject to any rules made under this Part, the Liquidator duly appointed under this Part shall, within six months from the date of the winding up order or the commencement of this Act, whichever is later, from time to time, file to the High Court a list of debtors containing such particulars as may be required by the High Court:

Provided that such list may, with the leave of the High Court, be filed after the expiry of the said period of six months:

(3) On receipt of any list under sub-section (2), the High Court shall, wherever necessary, cause notices to be issued to all persons affected and after making an inquiry in such manner as may be provided by rules made under this Part, it shall make an order settling the list of debtors:

Provided that nothing in this section shall prevent the High Court from settling any such list in part as against such of the persons whose debts have been settled without settling the debts of all the persons placed on the list.

(4) At the time of the settlement of any such list, High Court shall pass an order for the payment of the amount due by each debtor and make such further orders as may be necessary in respect of the relief claimed, including relief against any guarantor or in respect of the realisation of any security.

(5) Every such order shall, subject the provisions for appeal, be final and binding for all purposes as between the bank on the one hand and the person against whom the order is passed and all persons claiming through or under him on the other hand, and shall be deemed to be a decree in a suit.

(6) In respect of every such order, the High Court shall issue a certificate specifying clearly the relief granted and names and descriptions of the parties against whom such relief have been granted, the amount of costs awarded and by whom, and out of what funds and in what proportions, such costs are to be paid; and every such certificate shall be deemed to be a certified copy of the decree for all purposes including execution.

(7) At the time of settling the list of debtors or at any other time prior or subsequent thereto, the High Court shall have power to pass any order in respect of a debtor on the application of the Liquidator duly appointed under this Part for the realisation, management, protection, preservation or sale of any property given as security to the bank and to give such powers to the Liquidator to carry out the aforesaid directions as the High Court thinks fit.

(8) The High Court shall have power to sanction a compromise in respect of any debt and to order the payment of any debt by instalments.

(9) In any case in which any such list, settled ex-parte as against any such person may, within thirty days from the date of the order settling the list, apply to the High Court for an order to vary such list, so far as it concerns him, and if the High Court is satisfied that he was prevented by any sufficient cause from appearing on the date fixed for the settlement of such list and that he has a good defence to the claim of the bank on merits, the High Court may vary the list and pass such orders in relation thereto as it thinks fit:

Provided that High Court may, if it so thinks fit, allow the application after the expiry of the said period of thirty days.

(10) Nothing in this section shall—

- (a) apply to debt which has been secured by a mortgage of immovable property, if a third party has any interest in such immovable property; or
- (b) prejudice the rights of the Liquidator to recover any debt due to bank under any other law for the time being in force.

### **132. Documents of bank to be evidence.**

(1) Entries in the books of account or other documents of a bank which is being wound up shall be admitted in evidence in all proceeding by or against the bank; and all such entries may be proved either by the production of the books of account or other documents of the bank containing such entries or by the production of a copy of the entries, certified by the liquidator under his signature and stating that it is a true copy of the original entries and that such original entries are contained in the books of account or other documents of the bank in his possession.

(2) Notwithstanding anything to the contrary contained in the Evidence Act, 1872, all such entries in the books of account or other documents of a bank shall as against the directors of the bank in respect of which the winding up order has been made before the coming into force of this Act, be **prima facie** evidence of the truth of all matters purporting to be therein recorded.

### **133. Report by Liquidator on conduct of promoters of banks etc.**

(1) Where an order has been made for the winding up of a bank, the Liquidator duly appointed under this Part shall submit a report whether in his opinion any loss has been caused to the bank since its formation by any act or omission (whether or

not a fraud has been committed by such act or omission) of any person in the promotion or formation of the bank or of any director or auditor of the bank.

(2) If, on consideration of the report submitted under sub-section (1), the High Court is of opinion that any person who has taken part in the promotion or formation of the bank or has been a director or an auditor of the bank should be publicly examined, it shall hold a public sitting on a date to be appointed for the purpose and direct that such person, director or auditor to attend the sitting and shall be publicly examined as to the promotion or formation or the conduct of the business of the bank, or as his conduct and dealings, in so far as they relate to the affairs of the bank:

Provided that no such person shall be publicly examined unless he has been given an opportunity to show cause why he should not be so examined.

### **134. Public examination of directors and auditors.**

(1) The Liquidator duly appointed under this Part shall take part in the examination and for that purpose may, if specially authorized by the High Court in that behalf, employ such legal assistance as may be sanctioned by the High Court.

(2) Any creditor or contributory may also take part in the examination either personally or by any person entitled to appear before the High Court.

(3) The High Court may put such questions to the person examined as it think fit.

(4) The person examined, shall be examined on oath and shall answer all such questions as the High Court may put or allow to be put to him.

(5) A person ordered to be examined under this section may, at his own cost, employ any person entitled to appear before the High Court who shall be at liberty to put to him such questions as the High Court may deem just for the purpose of enabling him to explain or qualify and answer given by him:

Provided that if he is, in the opinion of the High Court, exculpated from any charges made or suggested against him, the High Court may allow him such costs in its discretion as it may deem fit.

(6) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined and may thereafter be used in evidence against him in any proceeding, civil or criminal, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(7) Where on such examination, the High Court is of opinion (whether a fraud has been committed or not)—

- (a) that a person who has been a director of the bank is not fit to be a director of a company; or
- (b) that a person who has been an auditor of the bank or a partner of a firm acting as such auditor is not fit to act as an auditor of a company or to be a partner of a firm acting as such auditor,

the High Court may make an order that that person shall not, without the leave of the High Court, be a director of, or in any way, whether directly or indirectly, be concerned or take part in the management of any company or, as the case may be, act as an auditor of, or be a partner of a firm acting as auditors of, any company for such period not exceeding five years as may be specified in the order.

**135. Special provisions for assessing damages against delinquent directors, etc.**

(1) Where an application is made to the High Court under the Companies Ordinance 1984, against any promoter, director, manager, liquidator or officer of a bank for repayment or restoration of any money or property and the applicant makes out a prima facie case against such person, the High Court shall make an order against such person to repay and restore the money or property unless he proves that he is not liable to make the repayment or restoration either wholly or in part:

Provided that where such an order is made jointly against two or more such persons, they shall be jointly and severally liable to make the repayment or restoration of the money or property.

(2) Where an application is made to the High Court under the Companies Ordinance, 1984 and the High Court has reason to believe that a property belongs to any promoter, director, manager, liquidator or officer of the bank, whether the property stands in the name of such person or of any other person as the ostensible owner, the High Court may, at any time, whether before or after making an order under sub-section (1), direct the attachment of such property or of such portion thereof as the High Court may think fit, and when the property so attached stands in the name of an ostensible owner, it shall remain subject to attachment unless the ostensible owner can prove to the satisfaction of the High Court that he is the real owner and the provisions of the Code of Civil Procedure, 1908 (Act V of 1908), relating to attachment of property shall, as far as may be, apply to such attachment.

(3) For the purposes of this Sub-Part, “property” includes property transferred or otherwise disposed of by the person referred to in sub-section (1) or any other person as ostensible owner of such property within two years preceding the commencement of proceedings under the Companies Ordinance, 1984 or during the currency of such proceedings, if the High Court is satisfied by affidavit or otherwise that the transfer was otherwise than in good faith and for sufficient consideration.

**136. Duty of directors and officers of a bank to assist in the realisation of property.**

Every director or other officer of a bank which is being wound up shall give such assistance to the liquidator duly appointed under this Part as he may reasonably require in connection with the realisation and distribution of the property of the bank.

**137. Special provisions for punishing offences in relation to banks being wound up.**

(1) The High Court may, if it thinks fit, take cognizance of and try in a summary way any offence punishable under this Act or under the Companies Ordinance, 1984 alleged to have been committed by any person who has taken part in the promotion or formation of the bank which is being wound up or by any director, manager or officer thereof.

(2) When trying any such offence as aforesaid, the High Court may also try any other offence not referred to in sub-section (1) which is an offence with which the accused may, under the Code of Criminal Procedure, 1898 (Act V of 1898), be charged at the same trial.

(3) In any case tried summarily under sub-section (1), the High Court—

- (a) need not summon any witness, if it is satisfied that the evidence of such witness will not be material;
- (b) shall not be bound to adjourn a trial for any purpose unless such adjournment is, in the opinion of the High Court, necessary in the interest of justice;
- (c) shall, before passing any sentence, record judgement embodying the substance of the evidence and also the particulars specified in section 263 of the Code of Criminal Procedure, 1898 (Act V of 1898), so far as the section may be applicable; and nothing contained in sub-section (2) of section 262 of the Code of Criminal Procedure, 1898 (Act V of 1898), shall apply to any such trial.

(4) All offences in relation to winding up alleged to have been committed by any person specified in sub-section (1) which are punishable under this Act or under the Companies Ordinance, 1984 and which are not tried in a summary way under subsection (1) shall, notwithstanding anything to the contrary contained in that Act or the Code of Criminal Procedure, 1898 (Act V of 1898), or in any other law for the time being in force, be taken cognizance of and tried by a Judge of the High Court other than the Judge for the time being dealing with the proceeding for the winding up of the bank.

(5) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the High Court may take cognizance of any offence under this section without the accused being committed to it for trial and all such trials shall be without the aid of a jury.

### **138. Appeals.**

(1) An appeal shall lie from any order or decision of the High Court in a civil proceeding under this Act when the amount or value of the subject matter of the claim exceeds five million rupees.

(2) The High Court may by rules provide for an appeal against any order made under this Sub-Part and the conditions subject to which any such appeal would lie.

(3) Subject to the provisions of sub-section (1) and sub-section (2) and notwithstanding anything contained in any other law for the time being in force, every order or decision of the High Court shall be final and binding for all purposes as between the bank on the one hand, and all person who are parties thereto and all persons claiming through or under them or any of them, on the other hand.

### **139. Special period of limitation.**

(1) Notwithstanding anything to the contrary contained in the Limitation Act, 1908 (IX of 1908), or in any other law for the time being in force, in computing the period of limitation prescribed for a suit or application by a bank which is being wound up, the period commencing from the date of the presentation of the petition for the winding up of the bank shall be excluded.

(2) Notwithstanding anything to the contrary contained in the Limitation Act, 1908 (IX of 1908), or the Companies Ordinance, 1984 or in any other law for the time being in force, there shall be no period of limitation for the recovery of arrears of calls from any director of a bank which is being wound up or for the enforcement by the bank against any of its directors of any claim based on a contract, express or implied; and in respect of all other claims by the bank against its directors, the period of limitation shall be twelve years from the date of the accrual of such claims or five years from the date of the first appointment of the liquidator, whichever is longer.

(3) The provisions of this section, in so far as they relate to banks being wound up, shall also apply to a bank in respect of which a petition for the winding up has been presented before the coming into force of this Act.

### **140. State Bank to tender advice in winding up proceedings.**

Where in any proceeding for the winding up of a bank in which any person other than the State Bank has been appointed as the liquidator and the High Court has directed the liquidator to obtain the advice of the State Bank on any matter (which it is hereby

empowered to do), it shall be lawful for the State Bank to examine the record of any such proceeding and tender such advice on the matter as it may think fit.

**141. Judicial Magistrate to assist liquidator in taking charge of property of bank being wound up.**

(1) For the purpose of enabling the liquidator to take into his custody or under his control all property, effect and actionable claims to which a bank, which has been ordered to be wound up, is or appears to be entitled, the liquidator or the Administrator may if he deems it necessary in the interest of speedy liquidation, request in writing the Judicial Magistrate, within whose jurisdiction any property, books of account or other documents of such bank may be situated or be found, to take possession thereof, and the Judicial Magistrate shall, on such request being made to him, take possession of such property, books of account or other documents and forward them to the liquidator or the Administrator.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Judicial Magistrate may take or cause to be taken such steps and use or cause to be used such force as may, in his opinion, be necessary.

**142. Enforcement of orders and decisions of High Court.**

(1) All orders made in any civil proceeding by a High Court may be enforced in the same manner in which decrees of such court made in any suit pending therein may be enforced.

(2) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (V of 1908), a liquidator may apply for the execution of a decree by a court, other than the one which made it, on production of a certificate granted under sub-section (6) of section 129 and on his certifying in writing the amount remaining due or relief remaining unforced under the decree.

(3) Without prejudice to the provisions of sub-section (1) or sub-section (2), any amount found due to the bank by an order or decision of the High Court may, with the leave of the High Court, be recovered in the same manner as an arrears of land revenue.

**143. Power of High Court to make rules.**

The High Court may make rules consistent with this Act prescribing:

- (a) the manner in which inquiries and proceedings this under Part may be held;
- (b) the offences which may be tried summarily;

- (c) the authority to which, and the conditions subject to which, appeals may be preferred and the manner in which such appeals may be filed and heard; and
- (d) any other matter for which provision has to be made for enabling the High Court to effectively exercise its functions under this Act.

**144. References to directors, etc., shall be construed as including reference to past directors, etc.**

For the removal of doubt, it is hereby declared that any reference in this Part to a director, manager, liquidator, officer or auditor of a bank shall be construed as including a reference to any past or present director, manager, liquidator, officer or auditor of the bank.

**145. Validation of certain proceedings.**

Notwithstanding anything in this Part, no proceeding held, judgement delivered or decree or order made before the commencement of this Act, by any Court other than the High Court in respect of any matter over which the High Court has jurisdiction under this Act shall be invalid or be deemed ever to have been invalid merely by reason of the fact that such proceeding, judgement, decree or order was held, delivered or made by a court other than the High Court.

## PART XII

### BANKING MOHTASIB

#### **146. Appointment of Banking Mohtasib.**

(1) There shall be a Banking Mohtasib who shall be appointed by the President in consultation with the Governor of the State Bank.

(2) The Banking Mohtasib shall be a person of high integrity and unimpeachable banking or legal credentials who is not a shareholder of a bank or financial institution and is not, has not, been a defaulter of any loans.

(3) The jurisdiction of the Banking Mohtasib in relation to banking transactions shall be to—

- (a) enquire into complaints of banking malpractices;
- (b) perverse, arbitrary or discriminatory actions;
- (c) violations of banking laws, rules, regulations or guidelines;
- (d) inordinate delays or inefficiency; and
- (e) corruption, nepotism or other forms of mal-administration.

(4) The Banking Mohtasib shall hold office for a period of three years and shall not be eligible for any extension of tenure or for re-appointment under any circumstances whatsoever.

(5) The Banking Mohtasib shall not hold any other office of profit in the service of Pakistan or occupy any other position carrying the right to remuneration for the rendering of services.

#### **147. Terms and conditions of the Banking Mohtasib.**

(1) The Banking Mohtasib shall be entitled to the same salary and allowances as a Judge of a High Court.

(2) The Banking Mohtasib may be removed from office on the ground that he has been guilty of misconduct or that he is incapable of properly performing the duties of his office by reason of physical or mental incapacity:

(3) The Banking Mohtasib shall be provided with a secretariat to be appointed in consultation with the State Bank.

(4) Appointments to the secretariat may be made on deputation from the State Bank or other banks or otherwise on the basis of professional qualifications; and the costs of the secretariat shall be shared by banks in such proportions as may be determined by the State Bank.

(5) The Banking Mohtasib shall have the power and responsibility—

- (a) to evaluate complaints from customers, borrowers, banks or from any concerned body or organization;
- (b) to facilitate the amicable resolution of complaints after giving hearings to the complainant and the concerned bank; and
- (c) receiving evidence on affidavit
- (d) issuing commission for the examination of witnesses; and
- (e) in the event that complaints cannot be resolved by consent, to give this finding which shall be acted upon in the manner set out herein.

(6) The Banking Mohtasib shall exercise his powers and authority in the following manner:-

- (a) in relation to all banks operating in Pakistan, the Banking Mohtasib shall be authorised to entertain complaints of the nature set out herein below:-
  - (i) failure to act in accordance with banking laws and regulations including policy directives or guidelines, the proper interpretation of any regulations, directions or guidelines issued by the State Bank from time to time;

Provided that if there is a dispute as to issued by the State Bank the same shall be referred to the State Bank for clarification;

- (ii) delays or fraud in relation to the payment or collection of cheques, drafts or other banking instruments or the transfer of funds;
- (iii) fraudulent or unauthorised withdrawals or debit entries in accounts;
- (iv) complaints from exporters or importers relating to banking services and obligations including letter of credits;
- (v) complaints from holders of foreign currency accounts, whether maintained by residents or non-residents;

- (vi) complaints relating to remittances to or from abroad;
  - (vii) complaints relating to mark-up or other matters based on the ground of a violation of an agreement or of regulations made by the State Bank.
  - (viii) complaints relating to the payment of utility bills;
  - (ix) corrupt or mala fide practices by bank officers;
  - (x) gross dereliction of duty in dealing with customers; and
  - (xi) inordinate delays in taking decisions; and
- (b) the Banking Mohtasib shall not entertain any complaint or application which has already been disposed off by State Bank or any court in Pakistan.

**148. Reference to Banking Mohtasib by Court.**

If at any time during the pendency of a case, a court trying a case relating to recovery of loan by a bank is of the opinion that the management of the bank has prima facie acted in a mala fide manner, or in violation of banking rules and regulations, it may make reference to the Banking Mohtasib for inquiring into the matter and passing such order in accordance with the provisions hereof as may deem fit:

Provided that the making of a reference shall not prevent the court from deciding the claim before it on merits.

**149. Procedure for making complaints.**

(1) A complaint shall be made on solemn affirmation or oath in writing addressed to the Banking Mohtasib.

(2) The complaint shall set out the full particulars of the transaction complained of and the name and address of the complainant.

(3) Prior to making a complaint, the complainant shall intimate in writing to the concerned bank his intention of filing a complaint and if the bank either fails to respond, or makes a reply which is unsatisfactory to the complaint, within a period of 45 days, the complainant may file a complaint at any time thereafter within a further period of 45 days:

Provided that the Banking Mohtasib may, if satisfied that there were grounds for the delay in filing the complaint, condone the delay and entertain the complaints.

(4) The Banking Mohtasib may adopt any procedure as he considers appropriate for investigating a complaint:

Provided that an order shall not be passed against a bank without first giving it a notice and an opportunity of a hearing.

(5) The Banking Mohtasib shall not have any power to issue an order in the nature of a stay order or to entertain any complaints if the matter is pending before a court or other legal forum.

(6) The Banking Mohtasib may reject a complaint summarily or he may accept the same or pass any other order he deems fit:

Provided that in each case he shall pass a reasoned order for his decision.

#### **150. Recommendations for implementation.**

(1) In the event the Banking Mohtasib comes to the conclusion that the complaint is justified, in part or in whole, he shall try and facilitate an amicable resolution or settlement by resort to mediation.

(2) In the event that no resolution of the dispute is achieved, the Banking Mohtasib may communicate his findings to the concerned bank with the direction—

- (a) to reconsider the matter;
- (b) to modify or cancel the earlier decision, action or failure to take the appropriate action;
- (c) to pay reasonable compensation to the complainant as fixed by the Banking Mohtasib;
- (d) to take the requisite steps to improve the functioning or efficiency of the bank; and
- (e) to take such other remedial steps or actions as may be specified by the Banking Mohtasib.

(3) The Banking Mohtasib may, in any case, if he deems fit or proper, forward a report to the State Bank recommending—

- (a) an inquiry, or the taking of the requisite steps or legal proceedings against a bank which has acted in violation of banking laws, procedure, regulations or directives of the State Bank; and

- (b) in the case of banking malpractice or corruption, nepotism or gross and flagrant dereliction by bank officers of their duties and responsibilities, the initiation of such action including a criminal prosecution or disciplinary proceedings as the State Bank may deem fit, either by itself, or through filing a report with relevant authorities in Pakistan.
- (4) In no case whatsoever shall the Banking Mohtasib have the power to direct that loans, advances or finances be given to a complainant.
- (5) Any bank, or officer or employee of a bank or a complainant aggrieved by an order passed by the Banking Mohtasib may file an appeal with the State Bank within thirty days which shall pass any order thereon it deems fit.
- (6) The findings of the Banking Mohtasib shall be implemented by the concerned bank within a period of thirty days and compliance thereof shall be submitted accordingly.
- (7) In case an appeal against the decision of the Banking Mohtasib is filed before the State Bank, the said period of thirty days shall be computed from the date of rejecting the said appeal.
- (8) Any order passed by the Banking Mohtasib which has not been appealed against, within a period of thirty days from the date of the order or any order passed by the State Bank in appeal, as the case may be, shall become final and operative and if not implemented, shall render the bank concerned to such action including the imposition of a fine or penalty as the State Bank may deem fit, and in relation to an officer of a bank, to the appropriate disciplinary or other proceedings.
- (9) Nothing contained herein shall prevent a complainant from filing a suit against a bank in the event his complaint is rejected.

**151. Power to call for information.**

The Banking Mohtasib shall have the power for purposes of disposing a case, to require a bank to disclose to him any information subject to the following conditions:-

- (a) the Banking Mohtasib shall make every endeavour to ensure that banking confidentiality is maintained as required by this Act and banking practice and shall take no action which is in violation thereof;
- (b) the Banking Mohtasib may call for any or all such documents which are relevant or pertinent for purposes of deciding a complaint:

Provided that he shall not be entitled to call for unrelated documents or documents which may compromise the bank's position in relation to other customers; or

- (c) in the event of a bank refusing to furnish information, or copies of relevant documents, the Banking Mohtasib shall not be authorised to compel the bank to comply with his order but he may draw an adverse inference and comment on the same in his findings.

**152. Report of Banking Mohtasib.**

(1) The Banking Mohtasib shall send to the State Bank on or before the 31st March in every succeeding year a report setting out a review of the activities of his office during the preceding year.

(2) The Banking Mohtasib shall also submit a report to the State Bank containing the results of such inquiries as he may be directed to conduct by the State Bank from time to time.

(3) All reports submitted by the Banking Mohtasib shall be published and released to the public unless directed otherwise for reasons to be recorded by him.

**153. Bar of Jurisdiction.**

No court or other authority shall have jurisdiction to:-

- (a) Question the validity of any action taken, or intended to be taken, or order made, or anything done or purporting to have been taken, made or done under part XII of this Act; or
- (b) Grant an injunction or stay or to make any interim order in relation to any proceedings before, or anything done or intended to be done or purported to have been done by, or under the orders or at the instance of the Banking Mohtasib.
- (c) Compel the Mohtasib or his staff to testify or produce evidence in any judicial or administrative proceeding with respect to any matter involving the exercise of their official duties, or summon or otherwise compel the production of and admit in evidence any or all related memoranda, work, product, notes or case files of the Mohtasib, in any judicial or administrative proceeding.

**154. Immunity.**

No suit, prosecution or other legal proceedings shall lie against the Banking Mohtasib, member of his staff, or any person authorized by the Banking Mohtasib for anything which is in good faith done or intended to be done under this Act

## PART XIII

### Provisions relating to consolidated supervision

#### 155. Controller to be authorised by the State Bank

- (1) No person shall be a controller of a bank or a company specified in Section 3 unless that person is authorised to be a controller by the State Bank. Provided that if a person has become a controller by operation of law, he shall apply to the State Bank within thirty days of his acquiring such control.
- (2) Before authorisation as a controller, the State Bank may satisfy itself through inspection or through any other means of gathering information about shareholding pattern, voting power, financial, personal and professional background and reputation of the person to be the controller. State Bank may, for the purpose of evaluating applications for controllership, prescribe application procedures, including information requirements and criteria for fitness and propriety.
- (3) State Bank may refuse any application for authorisation to be a controller if it is not satisfied with any of the conditions or information submitted for the purpose.
- (4) Without limiting the grounds on which the State Bank may reject an application to be a controller of a bank or an entity specified in Section 3, the State Bank shall reject an application if it is satisfied that any of the following circumstances apply:
  - (a) the State Bank is unable to determine the ultimate beneficial owner of a proposed controlling interest;
  - (b) any information contained in the application for or any information submitted in connection therewith is found to be false, misleading or inaccurate;
  - (c) the State Bank has determined that there are indications that the applicant would not comply with any of the requirements under this Act or any other law in Pakistan;
  - (d) the State Bank has determined that there are indications that the influence to be exercised by the applicant would threaten the sound and prudent management of a bank or an entity specified in Section 3, if application is granted;
  - (e) the internal control and risk management procedures of the applicant – in particular, the procedures for managing potential conflicts of interest between the applicant and the bank or an entity specified in Section 3 - would be inadequate; or
  - (f) the applicant is connected to a group of persons where the State Bank considers that such connection would threaten the sound and prudent management of the bank or an entity specified in Section 3 or hinder, delay or frustrate the State Bank in the discharge of its regulatory and supervisory responsibilities.

(5) The State Bank shall inform the applicant in writing of its decision whether to issue or refuse an authorisation to be a controller under this Act.

Provided that the State Bank may:

- (a) by directives, set a higher or lower percentage for the person to be a controller than that specified in section 2 , either generally or in a class of cases specified in the directives.
- (b) may declare in writing that a specified person is or is not a controller of a specified bank or a banking group;

Provided further that the State Bank shall not make a declaration under clause (b) of proviso to sub-section 5 that a person is a controller of a bank or a banking group unless—

- (a) the person has been given notice of the proposed declaration and a reasonable opportunity to make representations to the State Bank in the matter; and
- (b) having regard to any such representations, the State Bank is satisfied that the person is in a position to control or exert significant influence over the business or financial operations of the bank or banking group.

#### **156. Approval of changes in the level of control or transfers of control**

- (1) No controller of a bank or banking group or a non-operating bank holding company shall enter into any subsequent agreement or arrangement to acquire any more voting shares in the bank or banking group or non-operating bank holding company, regardless of the percentage of the shares subject of such subsequent acquisition, without seeking prior approval from the State Bank.
- (2) Any controller intending to dispose of any part of its holdings in a controlled bank or an entity specified in Section 3 shall inform the State Bank of the planned disposal in writing not less than two weeks before the date of such disposal or such other period as may be specified by the State Bank. The sale of shares as aforesaid will be materialized unless State Bank considers such sale as detrimental to the interest of the bank or its depositors or the depositors of any of its controlled entity..
- (3) Disposal of a controlling interest in a bank or an entity specified in Section 3 to another controller is subject to the new controller being authorised by the State Bank or any other arrangement to be granted by State Bank.
- (4) Upon incorporation of a new company by them, the controller(s) of the company (ies) of a banking group or a non-operating bank holding company shall inform State Bank in writing, within fifteen days of such incorporation, about all the particulars of such company..

#### **157. Power to impose, vary or revoke restrictions or conditions**

The State Bank may at any time impose restrictions or conditions on an authorisation issued under this section, or vary or revoke any restriction or condition imposed on such authorisation.

- (1) Such restrictions and conditions should be consistent with the objective of preserving the safety, soundness, and efficiency of the bank or an entity specified in Section 3 to which the authorisation relates.
- (2) Without prejudice to subsections (1), such restrictions and conditions may include:
  - (a) access to information about the ownership, control or financial condition of entities under the control of the controller that are not directly regulated or supervised by the State Bank;
  - (b) the right of the State Bank to inspect entities under the control of the controller whether directly regulated or supervised by the State Bank or not;
  - (c) the right of the State Bank to investigate suspected irregularities in or breaches of financial sector laws by entities under the control of the controller that are not directly regulated or supervised by the State Bank, where those suspected irregularities or breaches could threaten the safety or soundness of the bank or an entity specified in Section 3;
  - (d) limits on intra-group exposures from the bank or a company licensed or supervised by State Bank to other members of the group controlled by the controller;
  - (e) the use of common brands that could imply that the bank or a company licensed or supervised by State Bank supports other entities under the control of the controller; and
  - (f) the right of the State Bank to set regulatory capital adequacy and other prudential requirements for the consolidated group of entities under the control of the controller.

#### **158. Power of State Bank to require a banking group to establish a non-operating bank holding company**

Where the State Bank is satisfied that it is not practicable to adequately monitor and supervise the risks to the bank or banking group due to potential conflicts of interest between the commercial interests of a controller and the interests of the bank or banking group, the State Bank may require a controller(s) or controlling entity(ies) to establish a non-operating bank holding company to control the banking group and may limit the nature, size and scope of entities that may be included in the banking group.

#### **159. Cancellation of authorisation to a controller**

- (1) The State Bank may suspend or cancel the authorisation to be a controller of a bank or an entity specified in Section 3 if:
  - (a) the authorisation was issued based on information in support of application that was found to be false and misleading subsequent to the issue of the license;
  - (b) the State Bank determines that the controller no longer satisfies the requirements of authorisation or is no longer in compliance with any conditions or restrictions imposed on the controller's authorisation, or is not in compliance with any applicable provisions of this Act;
  - (c) the bank or an entity specified in Section 3 has been liquidated and the State Bank has determined that all its obligations have been discharged; or

- (d) all of the assets and liabilities deriving from the business of the bank or an entity specified in Section 3 have been vested in another bank or an entity specified in Section 3.
- (2) Before an authorisation is cancelled under clause (a) or clause (b) of subsection (1), a notice shall be served by the State Bank on the controller concerned specifying the reasons for the proposed cancellation and inviting the controller to a hearing on a date specified in the notice.
- (3) The State Bank may allow an extension of time for the controller to meet any condition that the State Bank deems necessary for the control to continue or may cancel the authorisation.

**160. Power to call information, specify consolidated public financial statements and audit requirements**

- (1) Every banking group, through designated entity, or a non-operating bank holding company shall furnish to State Bank such information and returns on stand alone and on consolidated basis, in respect of its constituents and associated companies, in such manner and with such periodicity as State Bank may specify from time to time.
- (2) State Bank may specify the form in which a designated banking group or a non-operating bank holding company shall prepare consolidated financial statement for submission to State Bank and the periodicity of these statements. The State Bank may also require the designated banking groups or non-financial holding companies to prepare and publish such consolidated financial statements on a uniform date.
- (3)
  - (a) The State Bank may require a bank or a non-operating bank holding company to appoint common auditor(s) for all the entities of the group involved in financial services or the subsidiaries or controlled entities of the non-operating bank holding company from amongst the panel of auditors maintained for this purpose. The auditor(s) would also give their opinion on the consolidated financial statements of the group or of the non-operating bank holding company in addition to their opinion on the stand alone financial statements of the entities.
  - (b) The State Bank may require auditors to give their opinion or report on certain matters of any or all the entities of the banking group or of the non-operating bank holding company.
  - (c) The State Bank shall have powers to designate an auditor(s) for special audit of any entity of the banking group or of the non-operating bank holding company at the cost of that entity. The auditor(s) shall submit its report directly to State Bank.
- (4) If required by State Bank, the auditor shall also state in his report,—

(a) whether or not the information and explanations required by him in respect of all the group entities of banking group and all the subsidiaries and controlled entities of a non-operating bank holding company have been found to be satisfactory;

(b) whether or not the transactions of the non-operating bank holding company which have come to his notice have been within the powers of the company;

(c) whether or not the financial statements of the subsidiaries and other controlled entities of the non-operating bank holding company and of the individual companies of the group have been duly audited by the auditors and any qualification or concern therein have been incorporated in the audit report given on the consolidated financial statements of the banking group or of the non-operating bank holding company;

(d) any other matter which should be brought to the notice of the shareholders of non-operating bank holding company or the controllers of the group entities.

#### **161. State Bank to act as lead supervisor and coordination between supervisors**

(1) Notwithstanding anything contained in any other law, the State Bank shall act as lead supervisor in respect of all banking groups or the entities controlled by a non-operating bank holding company. The functional supervisor shall assist the State Bank in resolution of supervisory issues as and when required by the State Bank.

(2) Where entities within a banking group or entities under the control of a non-operating bank holding company are regulated with respect to prudential matters by a regulator other than the State Bank, or where entities licensed by the State Bank are subject to the jurisdiction of another regulatory or governmental bodies in certain matters, an effective framework for coordination between State Bank and another regulatory or governmental body shall be established on an on-going basis to promote adequate surveillance and supervision of the banking group or a non-operating bank holding company on a consolidated basis including exchange of information and supervisory resources as well as carrying out of on-site inspection, on periodical or need basis.

(3) If necessary, the State Bank may enter into similar arrangements as specified under subsection (2), with organisations outside Pakistan that have responsibilities under law for the regulation and supervision of financial institutions.

#### **162. Power of State Bank to designate “Banking Group” and “Designated Entity”**

(1) The State Bank may designate the entities which shall be considered the constituents or part of a designated “banking group”, considering the common control, financial conditions and safety of a banking group or an entity of a

banking group or its relationship with an entity or entities of a banking group as deemed necessary for the purpose of this Act.

- (2) State Bank may designate an entity within a banking group as a “designated entity” for ensuring timely and accurate supply of information, data or returns to the State Bank related to the banking group for the purpose of compliance with the provisions of this Act.
- (3) Designation under subsection (2) shall not absolve the other entities of the group from their obligations under the provisions of this Act, either as a separate legal entity or as a member of the banking group.

**163. Power to supervise non-operating bank holding companies**

- (1) Notwithstanding anything to the contrary contained in any other law, the State Bank shall be the sole authority for regulating and supervising the prudential matters of non-operating bank holding companies.
- (2) The State Bank shall have all such powers as may be necessary for or in connection with, or incidental to, the performance of its functions under this Act including in relation to the maintenance of the safety, soundness, and efficiency of the banking and financial system in Pakistan.
- (3) Notwithstanding anything to the contrary contained in any other law, the State Bank shall be the sole authority for regulating and supervising the prudential matters of non-operating bank holding companies.
- (4) The State Bank shall have all such powers as may be necessary for or in connection with, or incidental to, the performance of its functions under this Act including in relation to the maintenance of the safety, soundness, and efficiency of the banking and financial system in Pakistan.

**164. Consolidated Supervision not to entail any right to liquidity support from State Bank or deposit protection:**

No entity shall be entitled to any liquidity support or deposit protection scheme solely for the reason that it is a non-operating bank holding company or part or member of a banking group if it is not so entitled under the applicable law for the time being in force.

**165. Transitional arrangements for Consolidated Supervision**

- (1) Every guideline, circular, regulation, or rule issued by the State Bank or any other functional supervisor or authority to the entities specified under Section 3 before the commencement of this Act, shall be deemed to have been lawfully issued under the Banking Companies Ordinance, 1962 or under this Act in relation to the particular provision corresponding to the matter dealt with in the guideline, circular or note, and shall remain in full force and effect until it is amended, rescinded, or substituted;

(2) Every bank or an entity specified in Section 3 or a controller of a banking company or an entity specified in Section 3 holding a valid authorisation, license, permission, or approval issued by the State Bank or any other authority shall be deemed to be valid unless State Bank may require and issue fresh authorisation, license, permission, or approval as the case may be, for such entities.

(3) The State Bank will make provisions in regulations to establish transition arrangements to enable existing entities and controllers to comply with the provisions of this Act

## PART XIV

### MISCELLANEOUS

#### **166. Scheduled offences and penalties under this Act.**

- (1) Any person who contravenes-
- (a) any provision of this Act set out in the second column of the Schedule II;  
or

(b) any specification or requirement made, or any order in writing, direction, instruction, or notice, given, or any limit, term, condition or restriction imposed, or any other thing howsoever done, in the exercise of any power conferred under, pursuant to, or by virtue of, any provision of this Act set out in third column of the Schedule II,

shall be guilty of an offence under such provision and shall on conviction be liable to be punished with imprisonment not exceeding the term set out in the fourth column of the Schedule II or with a fine not exceeding the amount set out in the fifth column of the Schedule II, or with both, and in the case of a continuing offence, shall, in addition, be liable to be punished with a daily fine not exceeding the amount set out in the sixth column of the Schedule II for every day during which the offence continues:

Provided that where the person found guilty of such offence is a body corporate, the punishment of imprisonment set out in the fourth column of the Schedule II shall not apply to it.

(2) Without prejudice to the generality of section 9, the Federal Government shall, on the recommendation of the State Bank, from time to time, by order published in the Gazette, amend the Schedule II-

- (a) by deleting the whole of any item therein whereupon the provisions of sub-section (8) of section 167 shall apply to the offence specified in that item;
- (b) by adding a new item thereto and providing the fines there for under the fifth and sixth columns of that Schedule which shall not be in excess of ten million rupees and ten thousand rupees respectively;
- (c) by increasing or decreasing the amount of fines provided under the fifth and sixth column, respectively, provided that the aggregate of increase from time to time or any fine provided in the fifth column shall not, in any case, be in excess of ten thousand rupees; or

- (d) to correct any error in the second or third column of that Schedule.

**167. Penalties.**

(1) Whoever in any return, balance-sheet or other document or in any information required or furnished by or under or for the purposes of any provision of this Act, wilfully makes a statement which is false, inaccurate or misleading in any material particular, knowing it to be false, or wilfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine not exceeding ten million rupees.

(2) If any person, being the chairman, director, chief executive, by whatever name called, or official liquidator or an officer of a bank, mismanages the affairs of the bank or misuses his position for gaining direct or indirect benefit for himself or any of his family members, he shall be punishable with imprisonment for a term which may extend to ten years and shall also be liable to fine not exceeding ten million rupees, and shall be ordered by the court trying the offence, to deliver up or refund within a time to be fixed by the court any property acquired or gained by him in his own name or in the name of his family members by so mismanaging the affairs of the bank or misusing his position or, in default, to suffer imprisonment for a term which may extend to ten years.

(3) Any director, chief executive or officer of a bank that is either directly or indirectly owned, controlled or managed by the Federal Government or a Provincial Government who extends, or aids in extending, a loan, advance, or any financial facility to a borrower or customer on the verbal instructions of a holder of a public office without reducing the terms of the instructions into writing and drawing them to the attention of his superior officer, or the Board of Directors, shall be guilty of an offence punishable with imprisonment of either description which may extend to ten years, or with fine not exceeding the amount of loan, advance or financing facility so extended or upto ten million, whichever is higher, or with both, in addition to such other action which may be taken against him in accordance with law.

(4) If any person who is not a bank, or a bank whose licence has been cancelled, or any individual or association or body of individuals, transacts the business of banking in Pakistan, the chief executive, by whatever name called, of the bank and every of its director, manager, and other officer and the individual and every member of the association or body of individuals (hereinafter referred to as “the defaulting persons”), shall be deemed to be guilty of such contravention and shall be punishable with imprisonment of either description for a term which may extend to ten years and with a fine the amount of which shall not be less than five times the amount of deposits received by the defaulting persons or upto ten million, as the case may be, and shall be ordered by the Court trying the offence to pay the fine within a time to be fixed by the Court or in default to suffer further imprisonment for a term which may extend to ten years.

(5) Whoever contravenes, or attempts to contravene, or abets the contravention of any provisions of this Act or obstructs or hinders any person in the exercise of his powers or discharge of his functions under this Act, shall be punishable with imprisonment of either description for a term which may extend to five years and with fine not exceeding five million rupees, and, where the contravention is a continuing one, with a further fine which may extend to one hundred thousand rupees for every day during which such contravention continues.

(6) Where any offence against any provision of this Act has been committed by any institution, any person who at the time of the commission of the offence was a director, chief executive or officer of the institution or was purporting to act in any such capacity, or was in any manner or to any extent responsible for the management of any of the affairs of such institution, or was assisting in such management, shall be guilty of that offence unless he proves that the offence was committed without the consent or connivance and that he had exercised all such due diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of the functions in that capacity and to all the circumstances.

(7) Where any person (hereinafter in this sub-section referred to as the “principal”) would be liable under this Act to any punishment or penalty for any act, omission, neglect or default, he shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any employee or agent of his, or any person acting for the employee or the agent:

Provided that such act, omission, neglect or default was committed by the principal’s employee or agent in the course of his employment, or by the agent when acting on behalf of the principal, or by the person acting on behalf of such employee or agent in the course of his employment.

(8) Except as may be expressly provided in this section, any person who contravenes-

- (a) any provision of this Act; or
- (b) any specification or requirement made or any order in writing, regulations, direction, instruction, or notice given, or any limit, term, condition or restriction imposed, or any other thing howsoever done, in the exercise of any power conferred under, pursuant to, or by virtue of, any provision of this Act,

shall be guilty of an offence under such provisions, and if no penalty is expressly provided for the offence in this Act, shall be punishable with fine which may extend to three million rupees, and where a contravention or default is in continuing one, with a further fine which may extend to ten thousand rupees for every day during which such contravention or default continues.

(9) The pecuniary penalties prescribed under this Act shall be imposed and recovered by State Bank.

(10) Without prejudice to the provisions contained in this Act, if a bank fails or refuses to pay the fines or penalties imposed by State Bank under this Act, State Bank may, without notice to the bank, debit the amount of default to any account of the bank held with the State Bank.

**168. Dishonest removal of pledged goods.**

No one shall dishonestly remove or dispose any goods pledged or hypothecated with any bank as security for the payment of any debt, loan, finance or other similar facility or remove or dispose any such goods without the prior approval in writing of the bank.

**169. Cognizance of offences, etc.**

(1) No court shall take cognizance of any offence punishable under section 167, except on a complaint in writing made by an officer of the State Bank generally or specially authorised in writing in this behalf by the State Bank, and no court other than the High Court shall try any such offence.

(2) The High Court shall have in respect of the trial of an offence referred to in sub-section (1), all the powers which it has in relation to trial before it under the Code of Criminal Procedure, 1898 (Act V of 1898), hereafter in this section referred to as the Code, and shall follow the procedure provided in the Code for such trial except as hereinafter provided, namely:-

- (a) the trial shall be without a jury and the provisions of the Code shall have effect as if all references therein to jury or jurymen and to commitment proceedings and to any statement or documents made or prepared in the course of such proceedings had been omitted;
- (b) section 297 of the Code shall have effect as if it required the High Court, upon the case for the defence and the prosecutor's reply, if any being concluded, to proceed, with all reasonable speed, to pronounce its judgment; and
- (c) section 352 of the Code shall have effect as if it required the High Court, upon an application being submitted to it by the State Bank stating that it is in the interest of the banks in general or a bank in particular that any proceedings are not held in open court, to order that the public generally shall not have access to, or be or remain in, the room or building used by the Court.

**170. Offences in relation to entries in books, documents, etc.**

No person shall, with intent to deceive -

- (a) make or cause to be made a false entry;
- (b) omit to make, or cause to be omitted any entry;
- (c) alter, abstract, conceal or destroy, or cause to be altered, abstracted, concealed or destroyed, any entry,

in any book or record, or in any report, slip, statement or other document whatsoever, relating to the business, affairs, transactions, condition, property, assets, liabilities or accounts, of a bank.

**171. Application of fines.**

A Court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards-

- (a) payment of the costs of the proceedings;
- (b) the rewarding of the person on whose information the fine is recovered; or
- (c) payment to a bank of compensation for any loss caused by the offence.

**172. Restriction on acceptance of deposits withdrawable by cheques.**

No person other than a bank, the State Bank, or any other financial institution permitted by the Federal Government on the recommendation of State Bank and notified in the Gazette in this behalf shall accept from the public deposits of money withdraw able by cheque:

Provided that nothing contained in this section shall apply to any savings bank scheme run by the Government.

**173. Power of State Bank in regard to activities of domestic banks outside Pakistan.**

The State Bank may, by notification, order that any domestic bank or any class or category of domestic banks shall in regard to their activities outside Pakistan from a date to be specified in the regulations, -

- (a) discontinue to accept any interest bearing deposits or accept such deposits only upon such terms and under such conditions as may be specified in the regulations; or
- (b) discontinue to accept any deposits or accept deposits only upon such terms and under such conditions as may be specified in the notification.

**174. Unclaimed deposits and articles of value.**

- (1) Where—
- (a) a debt payable in Pakistan currency or any foreign currency as may be prescribed by the State Bank by order published through notification is owing by a bank by reason of a deposit, not being a deposit in the name of a minor or a Government or a court of law, at a branch of the bank in Pakistan in respect of which no transaction has taken place and no statement of account has been requested or acknowledged by the creditor during a period of ten years reckoned—
- (i) in the case of a deposit made for a fixed period, from the day on which the fixed period terminated, and
- (ii) in the case of any other deposit, from the day on which the last transaction took place or a statement of account was last requested or acknowledged by the creditor, whichever is later;
- (b) a dividend, bonus, profit or other sum of money whatsoever which has become due on a deposit and remained unpaid or unacknowledged by the creditor for period of ten years reckoned from the date on which the dividend, bonus, profit or other sum of money, as the case may be, became due and payable;
- (c) a cheque, draft or bill of exchange including an instrument drawn by one branch of the bank upon another such branch payable in Pakistan currency or any foreign currency referred to in clause (a) has been issued, certified or accepted by a bank at a branch of the bank in Pakistan and no payment has been made in respect thereof for a period of ten years from the date of issue, certification or acceptance;
- (d) a security, share, goods or any valuable article, hereinafter collectively and individually called “article”, lying in safe custody with a bank has not been inspected or acknowledged by the person who deposited the article with the bank for a period of ten years from the day on which it was last inspected or acknowledged by such person,

the bank shall forthwith give a three months’ notice in writing by registered post acknowledgement due to the creditor or the beneficiary of the cheque, draft or bill of exchange or the person in whose name the article stands in the books of the bank on his address last made known by him to the bank, and if on the expiry of the three months’ period, no acknowledgement or reply is received from the addressee, the bank shall pay or deliver as the case may be, within one month of the expiry of three months to the State Bank an amount equal (to the amount that would be owing if the instrument had been presented for payment, including

interest or profit, as the case may be, if any or the article, in accordance with the terms of the debt or instrument) or of the arrangement under which the article is lying in the safe custody of the bank, an payment or delivery accordingly shall discharge the bank from all liabilities in respect of the debt or instrument, or as the case may be.

(2) A notice required to be given by sub-section (1)—

- (a) may, in the case of a firm or a Hindu undivided family be addressed to any member of the firm or the manager or any adult male member of the family and, in the case of any other association of persons, to the principal officer thereof;
- (b) may be given to a duly authorized agent of the person whom it is required to be given or, where he has died, to his legal representative or where he has been declared an insolvent, to his assignee, provided the bank has had notice of appointment of the agent or of the death or insolvency of the person to whom it is required to be given;
- (c) shall, in the case of joint creditor or more than one beneficiaries of a cheque, draft or bill of exchange or article standing in the names of more than one person, be deemed to be sufficient notice to all such persons if given to any one of them; and
- (d) shall, notwithstanding the fact that it is miscarried or the addressee is dead or insane or has become insolvent or the envelope or wrapper is returned with the postal endorsement “addressee is untraceable” or any other like endorsement, be deemed to have been served on the fifteenth day following the day on which the envelope or wrapper in which it is contained is posted, if it is properly addressed, prepaid and posted, provided the bank has had no notice of the death, insanity or insolvency of the person to whom it is required to be given.

(3) A certificate in writing under the signature of an employee of a bank whose duty it is to address, prepay and post letters on behalf of the bank to the effect that the envelope or wrapper containing a notice required to be given by sub-section (1) was addressed, prepaid and posted shall be conclusive evidence of its having been so addressed, prepaid and posted.

(4) As soon as an amount is paid by a bank to the State Bank under sub-section (1), it shall cease to bear interest or rank for a share of profit and loss, notwithstanding anything to the contrary contained in the terms of the debt or instrument or any law for the time being in force.

(5) Where any bank has paid an amount or delivered an article to the State Bank under sub-section (1), the bank shall preserve and continue to preserve all signature

cards and signing authorities and other documents relating to the debt or instrument or article, as the case may be, until it is informed by the State Bank in writing that they need not be preserved any longer.

(6) Nothing in the Limitation Act, 1908 (IX of 1908), or in any other law for the time being in force shall affect the liability of a bank toward the State Bank under sub-section (1).

(7) Every bank shall, within thirty days after the close of each calendar year, submit to the State Bank a return in the prescribed form and manner of all unclaimed amounts and articles remaining unpaid or undelivered, as the case may be, in the books of the bank, after the expiry of ten years as reckoned under sub-section(1).

(8) The State Bank shall place on its website for a period of one year a list of the amounts and articles received by the State Bank under sub-section (1) and not claimed by any person:

Provided that it shall not be necessary to include in a list so published such amounts and articles of such value as the Federal Government may from time to time determine.

(9) Any bank which has paid any amount or delivered any article to the State Bank in accordance with sub-section (1) may, within thirty days from the date of such payment or delivery, as the case may be, submit to the State Bank its claim as regards lien, counter-claim or right of set-off in relation to the amount so paid or article so delivered.

(10) Any person who claims to be entitled to any money or article paid or delivered to the State Bank under sub-section (1) may submit his claim to the State Bank.

(11) Subject to sub-sections (9), (12) and (14), the State Bank may pass such order on a claim submitted to it under sub-section (9) or sub section (10) as it may deem fit, and, where the State Bank makes any payment or delivers any article to any person submitting a claim under sub-section (10) a receipt given by him shall be a good discharge to the State Bank.

(12) If any action involving a dispute about the ownership of any amount or article paid or delivered to the State Bank under sub-section (1) is pending in any court before the expiry of one year following the year in which the amount or article is so paid or delivered to the State Bank and the State Bank receives an intimation from the court or otherwise about such dispute, it shall retain the amount or article in the custody and dispose of it in accordance with the decision of the court.

(13) Subject to sub-sections (9), (12) and (14), any amount or article in respect of which no claim is preferred or about the disposal of which no information is received from any person before the expiry of one year

following the year in which the amount or article is received by the State Bank shall, on the expiry of the said period of one year, cease to be a claimable and shall, become the absolute property of and vest with the Federal Government.

(14) Notwithstanding anything contained in sub-section (1) about the giving of a notice by a bank to any creditor or beneficiary of any cheque, draft or bill of exchange or the person in whose name any article stands, or in subsection (8) about the publication by the State Bank of the list of unclaimed amounts or articles, the procedure to be followed and the manner of disposal of debts, instruments and articles in a case where the person concerned is not for the time being residing in Pakistan shall be such as may be determined by the Federal Government from time to time.

(15) Any decision of the State Bank under sub-section (11) about the acceptance, satisfaction or otherwise of the lien, right of set-off or counter-claim of a bank or, as the case may be, the entitlement of any person to any money or article received by the State Bank under sub-section (1) shall be final and shall not, except as provided in subsection (16), be called in question in any manner by or before any court, tribunal or other authority.

(16) Any person aggrieved by a decision of the State Bank under sub-section (11) may, within one month from the date of the decision, prefer an appeal to such officer of the State Bank superior in rank to the officer by whom the decision appealed against was given as may be authorized in this behalf by the Governor of the State Bank.

(17) For the purpose of adjudicating and determining any claim under sub-section (9) or sub-section (10) or deciding any appeal under sub-section (16), the State Bank shall follow such procedures as may be prescribed and 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 the attendance of any person and examining him on oath;
- (b) compelling the production of documents and material objects; and
- (c) issuing commissions for the examination of witnesses

(18) Any proceeding before the State Bank under this section shall be deemed to be a “judicial proceeding” within the meaning of section 228 of the Pakistan Penal Code (Act XLV of 1860), and the State Bank shall, for the purposes of any such proceeding, be deemed to be a “Civil Court” within the meaning of section 490 of the Code of Criminal Procedure, 1898(Act V of 1898).

(19) No court fee shall be payable for filing, exhibiting or recording any document in, or obtaining any document from, the State Bank in any proceeding under this section.

**175. Application of certain provisions to a bank incorporated by special enactments of the Federal Legislature.**

In the case of a bank incorporated by a Federal Act (or an Act of Parliament) and not liable to be wound up under the Companies Ordinance, 1984, the relevant provisions of this Act as may be prescribed by the State Bank by order through notification, without prejudice to the provisions of such Federal Act, apply so far as may be, to and in relation to such bank.

**176. Removal of difficulties.**

If any difficulty arises in giving effect to any of the provisions of this Act, the Federal Government may make such order as may appear to it to be necessary for the purpose of removing the difficulty.

**177. Power of the State Bank to make regulations.**

(1) In this Act, “regulations” includes directions, circulars, instructions or guidelines or any amendment thereof, made by the State Bank.

(2) The State Bank may, generally in respect of this Act or in respect of any particular provision of this Act, issue such regulations as the State Bank considers necessary or expedient in relation to any matter affecting or connected with or incidental to, the exercise, discharge, or performance of its powers, functions and duties under this Act.

(3) The power of the State Bank to issue regulations under sub-section (2) includes the power to amend, suspend or revoke the application of its regulations in whole or in part.

(4) Regulations made by the State Bank under this Act may specify conditions and requirements that vary from one class or category of persons, or from one class or category of asset, liability, business activity, account, record or document, to another.

(5) A person to whom a regulation made under sub-section (2) applies, shall give effect to such regulation within such period as may be specified by the State Bank.

(6) Each regulation made under this Act shall specify the legal authority under which it is made.

(7) The State Bank shall maintain a public register of the regulations made under this Act.

**178. Power of Federal Government to make rules.**

(1) The Federal Government may, in consultation with the State Bank , make rules to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act and all such rules shall be published in the Official Gazette.

(2) All rules made under this section shall be subject to the condition of previous publication, and the date to be specified under clause (3) of Section 23 of the General Clauses Act, 1897 (X of 1897), shall not be less than six month from the date on which the draft of the proposed rules was published:

Provided that in respect of that first occasion on which rules are made under this section, the provisions of this sub-section shall not apply.

**179. Power to exempt in certain cases.**

(1) The State Bank may, if it is satisfied that it would not be prejudicial to the promotion of a sound financial structure in Pakistan or if it would not be contrary to the public interest to do so, declare, by order published through notification, that any or all of the provisions of this Act shall not apply to any bank or to any class of banks generally, or to any particular person, or such class, category or description of persons :

Provided that the State Bank shall notify the Federal Government of any such exemption as may have been made by the State Bank under this subsection as soon as may be practicable

(2) An exemption under sub-section (1) may be granted for such duration as may be specified in the order, or for the duration of the existence of the person or bank, as the case may be, and may be subject to such limitations, restrictions or conditions as the State Bank may specify in the exemption.

**180. Exemption from liability.**

A bank and its officers and employees shall be exempted from criminal or civil liability of every description provided for in any law in respect of any property, movable or immovable, owned by the bank, exclusively or jointly with another person or persons so long as the property remains in the custody, power and control of such person or persons on account of licence, lease, hire-purchase, forward sale, rent sharing agreement or in any other arrangement.

**181. Exemption from requirement of licence.**

(1) Any requirement of a licence or permit to import or export any commodity or article or its purchase or sale shall not apply to a bank undertaking such transaction in the normal course of its banking business.

(2) In this section, a transaction undertaken by a bank shall be deemed to be in the normal course of its banking business, only if it is based on an agreement for sale or purchase, lease, or hire-purchase of the said commodity or article by the bank with its customer to whom finance is provided by it and who is in possession of a valid licence or has otherwise complied with the requirements of law governing the import or export or sale or purchase of such commodity or article.

**182. Continuance of charge and priority.**

Where a charge over any property has been or is created by any person in favour of a bank to secure any facility extended by the bank to such person and such facility is at any time converted into or substituted by any facility, such charge shall continue to remain valid and shall maintain its priority in favour of the bank against all charges created by such person in favour of any other person subsequent to the original date of registration of such charge.

**183. Restrictions on usage of banking facilities for disruptive activities.**

(1) Officers and members of a trade union in a bank shall be the employees of the bank.

Provided that any officer of a trade union shall continue to hold office of the said trade union until his employment has been terminated in accordance with the law for or ceases to be an officer of the said trade union, whichever is earlier

(2) No officer or member of a trade union in a bank shall use any bank facilities or assets to conduct or promote disruptive activities or carry out trade union activities during office hours or subject bank officials to physical harassment or abuse.

Provided that officers of the Collective Bargaining Agent union or unit can have negotiations with the management during office hours

(3) No officer or member of a trade union in a bank shall carry weapons into bank premises unless so authorized by the management of the bank.

(4) Any person violating any of the provisions of sub-section (1), (2) & (3) shall be guilty of an offence punishable with imprisonment of either description which may extend to three years, or with fine, or with both

**184. Transfer of account balance(s) to nominee(s) of a deceased depositor**

- (1) Notwithstanding anything contained in any other law for the time being in force in relation to succession and inheritance, any depositor may submit with a bank written nomination in the form prescribed by the bank, conferring on one or more persons the right to receive and collect the amount of deposit due to the depositor in the event of his death.

Provided that, where a depositor nominates more than one person, he shall specify in the nomination, the extent of the amount of deposit to be received or collected by each of the nominees in the form prescribed by the bank.

- (2) Where any nomination, duly made and deposited with the bank as aforesaid, purports to confer upon any person the right to receive or collect the whole or any part of the deposit therein mentioned, the said person shall, on the death of the depositor, become entitled to the exclusion of all other persons, the trustee of the deposit or the part thereof, as the case may be, and on receipt of proof of the death of the depositor along with proper identification, the deposit or the part thereof as the case may be, shall be transferred to the relevant person to the extent of his entitlement in the nomination.

- (3) If at any time:

- (a) such nomination is varied by another nomination made and deposited before the death of the depositor in like manner or expressly cancelled by notice in writing to the Bank, the fresh nominee will become entitled to receive the payment
- (b) such nomination at any time becomes invalid by reason of the happening of some contingency specified therein, it becomes void and of no legal effect
- (c) the nominated person predeceases the depositor, the nomination shall, so far as it relates to the right conferred upon the said person, become void and of no effect:

Provided that where provision has been duly made in the nomination conferring upon some other person such right instead of the person deceased, such right shall, upon the demise as aforesaid of the nominated person, pass to such other person nominated in the place of such deceased nominee.

- (3) The person to be nominated as aforesaid shall not be a person other than the following relatives of the depositor, namely, a spouse, father, mother, brother, sister and son or daughter.
- (4) The recipient of deposit or trustee as aforesaid shall distribute the amount in accordance with share of every heir of the deceased accountholder and deposit with the bank a certificate to this effect within fifteen days of the amount released.

- (4) The nomination as aforesaid shall in no way prejudice the right of the depositor making the nomination to transfer, dispose of or otherwise deal with the deposit by him during his lifetime and shall have effect in respect of the deposit owned by the said depositor on the day of his death.
- (5) The bank will stand fully discharged from any claim or liability in respect of the deposit of the deceased depositor upon payment of the deposit in accordance with the provisions of this Section.

Provided that the bank has not received any court order prior to making payment of the amount.

**185. Indemnity.**

(1) No action, suit, prosecution or other proceeding whatsoever shall lie or be brought, instituted, or maintained in any court or before any other authority against-

- (a) the Federal Government and the Provincial Government;
- (b) the State Bank;
- (c) the Banking Mohtasib;
- (d) any officer or employee of any such Government or of the State Bank, either personally or in his official capacity; and
- (e) any person lawfully acting on behalf of any such Government, or on behalf of the State Bank or the Banking Mohtasib, or on behalf of any such officer or employee, either personally or in his capacity as a person acting on such behalf,

for, any thing which is in good faith done or intended to be done including any act done or statement made or omitted to be done or made, or purporting to be done or made or omitted to be done or made, in pursuance or in execution of, or intended pursuance or execution of, this Act, or any order in writing, direction, instruction, notice or other thing whatsoever issued under this Act:

(2) No suit, prosecution or any other legal proceeding shall lie against the State Bank or any of its officers or employees or any other person acting on its behalf, for any thing done or intended to be done in good faith under this Act or any other law for the time being in force

(i) If any suit, application or other proceeding is filed against the State Bank and the court is satisfied that the State Bank has been improperly joined as an opposite party or the suit or proceeding is false, vexatious, unreasonable or without cause of action to the knowledge of the party by whom it has been put forward, and if such proceeding is dismissed, disallowed, abandoned or withdrawn against the State Bank, or its name as opposite party is struck out, the court may order payment to the State Bank by the party by which such suit or proceeding has been filed, special costs by way of compensation not exceeding an amount of one million rupees or the court's pecuniary jurisdiction, whichever is less.

(ii) The party against which an order has been made under this section shall not be exempted from any other liability which it might have incurred on account of such suit or proceeding.

(iii) The order passed under this section shall be executed as decree.

**186. Issues before the Court.**

(1) Any court having to adjudge a case filed in relation to the State Bank or any action taken by the State Bank or any employee or agent or person appointed by the State Bank to act on its behalf, the sole question before the court shall be whether -

- (a) the State Bank has exceeded its legal authority;
- (b) the procedures followed by the State Bank in making its decision were materially inconsistent with the procedures prescribed by this Act;
- (c) the notification, or publication of the rules and regulations of the State Bank fails to meet a material requirement of this Act; and
- (d) the decision of the State Bank is manifestly inconsistent with the provisions of this Act.

(2) Notwithstanding anything in any other law, any action taken by the State Bank shall remain in effect without stay or restriction during the period of any legal action by any person or appeal and any further appeal or other judicial proceedings related to the appeal.

(3) Any relief or redress granted by any court against any action taken by the State Bank shall be confined to compensation to the aggrieved person in monetary form.

## PART XV

### SAVINGS AND TRANSITIONAL

#### **187. Repeal of Banking Companies Ordinance, 1962.**

- (1) The Banking Companies Ordinance, 1962 is repealed with effect from the effective date.
- (2) Notwithstanding subsection (1) –
  - (a) all regulations, orders, directions, notifications, exemptions and other subsidiary legislation, howsoever called; and all approvals, directions, decisions, notifications, exemptions and other executive acts, howsoever called, made, given, or done under, or in accordance with, or by virtue of, the repealed Ordinance shall be deemed to have been made, given, or done under, or in accordance with, or by virtue of, the corresponding provisions of this Act, and shall continue to remain in full force and effect in relation to the persons to whom they applied until amended, repealed, rescinded, revoked or replaced under, in accordance with, or by virtue of, the corresponding provisions of this Act;
  - (b) every guideline, circular, regulation or license issued by the State Bank for any banking company or any other person before the effective date and in force immediately before the effective date, shall be deemed to have been lawfully issued under this Act in relation to the particular provision of this Act corresponding to the matter dealt with in the guideline, circular or note, and shall remain in full force and effect until it is amended, rescinded, or replaced under this Act;
  - (c) any application for a license, approval or consent, or for any other purpose whatsoever, or any appeal, made by any person to the State Bank or other authority under the repealed Ordinance before the effective date, and pending immediately before the effective date, shall, if there is a corresponding provision in this Act, be dealt with as if it was made under that provision and, if there is no such corresponding provision in this Act, such application or appeal shall lapse on the effective date;
  - (d) all transactions or dealings lawfully executed or entered into, and all business lawfully done, under or in accordance with the repealed Ordinance, by a person who was licensed under the repealed Ordinance and who is licensed or deemed to be licensed in respect of a corresponding business under this Act, with any depositor or other customer, creditor, debtor, or other person, shall be deemed to have been lawfully and validly executed, entered into, or done, under and in accordance with this Act, and

accordingly, any right or liability under such transaction, dealing or business existing, immediately before the effective date, shall be deemed to continue to be lawful and valid under this Act;

- (e) nothing in this Act shall affect any person's liability to be prosecuted or punished for offences committed under the repealed Ordinance before the effective date of this Act or any proceeding brought or sentence imposed before that day in respect of such offence; and
- (f) any right, privilege, obligation or liability acquired, accrued or incurred before the effective date or any legal proceedings, remedy or investigation in respect of such right, privilege, obligation or liability shall, in so far as it is not inconsistent with the provisions of this Act, continue to remain in force unless amended, revoked or rescinded under this Act.

(3) For the purposes of this Part "effective date" means the relevant date or dates, as the case may, notified by the Federal Government under section (1) of this Act

**188. References to Banking Companies Ordinance, 1962 or banking company etc. in other law.**

Where in any law, any reference is made to –

- (a) the repealed Ordinance, it shall be construed as a reference to this Act;
- (b) any specific provision of any of the repealed Ordinance, it shall be construed as a reference to a provision of this Act which corresponds as nearly as may be to such specific provision; and
- (c) a banking company under the Banking Companies Ordinance, 1962, it shall be construed as a reference to a bank which is carrying on banking business under this Act.

**189. Modifications to be made by Federal Government if any difficulty arises.**

If any difficulty arises with respect to the application of any one or more of the provisions introduced or amended by this Act and the savings and transitional provision, the Federal Government may, by order published in the *Gazette*, make such modifications to any one or more of those provisions as may appear to it to be necessary to prevent anomalies.

## SCHEDULE I

### (Sub-section (1) of section 19)

#### PERMISSIBLE ACTIVITIES OF BANKS

- (a) Acceptance of deposits and other repayable funds and the opening, maintaining and managing current, term deposit, savings and other similar accounts and issuing of certificates of investment or deposit;
- (b) the borrowing, raising, or taking up of money; the lending or advancing of money either upon or without security; the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hundies, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures certificates, scrips, participation term certificates, term finance certificates, musharaka certificates, modaraba certificates and such other instruments as may be approved by the State Bank and other instruments and securities whether transferable or negotiable or not; the granting and issuing of letters of credit, traveller's cheques and circular notes; the buying, selling and dealing in bullion species; the buying and selling of foreign exchange including foreign bank notes; derivatives trading; the acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, shares, debentures, debenture stock, bonds, obligations, securities, participation term certificates, term finance certificates, musharaka certificates, modaraba certificates, Sukuk and such other instruments as may be approved by the State Bank and investment of all kinds either as agent or principal and providing corporate, financial or portfolio financing advance on the same; the purchasing and selling of bonds, scrips or other forms of securities, (participation terms certificates, term finance certificates, musharaka certificates, modaraba certificates, Sukuk and such other instruments as may be approved by the State Banks on behalf of constituents or others; the negotiating of financing facilities; dealing or arranging deals or advising on collective investment or other investment schemes of any type and setting up and establishing or managing collective investment or other investment schemes of any type; providing financial advisory services; the receiving, safeguarding and administering of all kinds of bonds, Sukuk, scrips of valuables on deposit or for safe custody or otherwise; the providing of safe deposit vaults; the collecting and transmitting of money and securities; and using computer or other electronic systems or delivery channels to carry out any of the foregoing subject to any regulations as may be issued by the State Bank;
- (c) the providing of finance as defined under the Financial Institutions (Recovery of Finances) Ordinance, 2001;
- (d) the carrying on of an agency function for and on behalf of the Government or local authority or any other person or persons in respect of any business related to

- the provision of financial services and otherwise acting as an attorney on behalf of customers, but excluding the business of a managing agent or treasurer of a company;
- (e) providing financial services in accordance with the provisions of Part IV of this Act and to perform all activities required to comply with principles of Shariah as determined by Shariah Board;;
  - (f) contracting for public and private financing and negotiation and issuing the same;
  - (g) the promoting, effecting, insuring, guaranteeing, underwriting, participating in, managing and carrying out of any issue public or private, Government, municipal or other financing or of shares, stock debentures, debenture stock, Sukuk or other securities of any company, corporation or association and the lending of money or financing for the purpose of any such issue;
  - (h) carrying on and transacting every kind of guarantee and indemnity business;
  - (i) selling insurance products
  - (j) financial leasing and the purchasing or acquiring in the normal course of its banking business any property, including commodities, patents, designs, trademarks and copyrights with or without buy-back arrangements by the seller, or for sale in the form of hire-purchase or on deferred payment basis with mark-up or for leasing or licensing or for rent-sharing or for any other Islamic mode of financing;
  - (k) managing, selling and realising any property which may come into the possession of the bank in satisfaction or part satisfaction of any of its claims;
  - (l) acquiring and holding and generally dealing with any property or any right, title or interest in any such property which may form security or part of the security for any loans or advances or which may be connected with any such security;
  - (m) issuing and administering paper and electronic means of payment including digital or electronic money subject to any regulations as may be made by the State Bank;
  - (n) money transmission services and money booking;
  - (o) undertaking and executing trusts or Waqf funds in accordance with the regulations made by State Bank;
  - (p) undertaking the administration of estates as executor, trustee or otherwise;
  - (q) establishing and supporting or aiding in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit

- employees or ex-employees of the bank or the dependents or connections of such persons; granting pensions and allowances and making payments towards insurance; subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public, general or useful object;
- (r) the acquiring, constructing, maintaining and renovating any building or works necessary or convenient for the purpose of the bank;
  - (s) selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the bank;
  - (t) the acceptance of a sum of money in any manner or form from any person for a fixed period of time for investment in a business venture of the bank on the basis that the profit and loss of the venture will be shared with the person from whom such money is accepted in a manner determined at the time the money is accepted;
  - (u) the purchase of goods to be sold to a buyer on deferred payment terms or on spot basis provided that the goods and their suppliers are specified by such buyer and the price at which such goods are sold to the buyer and the deferred payment terms are determined at the time the bank agrees with the buyer to purchase the said goods for sale to the buyer;
  - (v) acquiring and undertaking the whole or any part of the business of any person or company, when such business is of a nature enumerated or described in this Schedule;
  - (w) financing of projects
  - (x) credit reference services;
  - (y) doing all such other things as are incidental or conducive to the promotion or advancement of the business of the bank; and
  - (z) Any other form of business which the State Bank may by circular specify as a form of business in which it is lawful for a bank to engage.
  - (za) Unless permitted by State Bank, no bank shall engage in any form of business other than those prescribed under this schedule.

**SCHEDULE II**  
**(Section 166)**  
**Offences and Penalties**

First Column	Second Column	Third Column	Fourth Column	Fifth Column	Sixth Column
Serial No.	Provision of this Act under section 166	Provision of this Act under section 166	Imprisonment	Fine Rupees	Daily Fine Rupees
1.	Section 10 (1)	-	10 years	10 million	10 thousand
2.		Section 11 (4)	5 years	5 million	5 thousand
3.	Section 11 (5)		5 years	5 million	5 thousand
4.	Section 11 (6)	-	3 years	3 million	-
5.		Section 18 (1)	-	5 million	5 thousand
6.	Section 19 (2)	-	10 years	10 million	10 thousand
7.	Section 20 (1)	-	5 years	5 million	5 thousand
8.	Section 20 (3)	-	-	1 million	1 thousand
9.	Section 20 (4)	-	5 years	5 million	5 thousand
10.	Section 21 (1)	-	3 years	3 million	5 thousand
11.	Section 22 (1)	-	5 years	5 million	5 thousand
12.	-	Section 22 (3)	3 years	3 million	5 thousand
13.	Section 23 (1)	-	5 years	5 million	5 thousand
14.	Section 24 (1)	-	5 years	5 million	5 thousand
15.	Section 25	-	10 years	10 million	10 thousand
16.	-	Section 27 (2)	5 years	5 million	5 thousand
17.	-	Section 27 (3)-	3 years	3 million	5 thousand
18.	Section 28 (1)	-	3 years	3 million	5 thousand
19.	-	Section 29 (9)	3 years	3 million	10 thousand
20.	-	Section 30 (3)	10 years	10 million	-
21.	Section 33 (1)	-	10 years	10 million	-
22.	Section 34 (1)	-	10 years	10 million	-
23.	Section 34 (6)	-	10 years	10 million	-
24.	Section 34 (10)	-	3 years	3 million	-
25.	Section 34 (11)	-	3 years	3 million	-
26.	Section 35 (2)	-	3 years	3 million	-
27.	Section 36 (4)	-	10 years	10 million	10 thousand
28.	Section 40(1)	-	5 years	5 million	5 thousand
29.	Section 40 (6)	-	5 years	5 million	5 thousand
30.	Section 41 (1)	-	5 years	5 million	5 thousand
31.	Section 41 (1)	-	5 years	5 million	5 thousand
32.	Section 42 (2)	-	5 years	5 million	5 thousand
33.	Section 43 (2)	-	5 years	3 million	3 thousand
34.	Section 44 (1) & (2)	-	-	3 million	-
35.	Section 45 (1) & (2)	-	-	3 million	1 thousand
36.		Section 48 (4)	5 years	5 million	5 thousand
37.	Section 48 (5)	-	3 years	3 million	3 thousand
38.	Section 50 (1)	-	-	3 million	10 thousand
39.	Section 50 (2)	-	-	3 million	10 thousand
40.	-	Section 50(3)	-	1% of the shortfall for each day of default	1 thousand
41.	-	Section 50 (5)	-	3 million	10 thousand
42.	Section 50 (8)	-	3 years	3 million	-
43.	Section 51 (1)	-	-	1% of the shortfall for each day of default	1 thousand
44.	Section 52 (1)	-	-	3 million	10 thousand
45.	Section 52 (3)	-	-	3 million	10 thousand
46.	Section 53 (1)	-	-	3 million	10 thousand
47.	-	Section 53(2)	-	1 million	1 thousand
48.	-	Section 54(1)	-	1 million	1 thousand
49.	-	Section 54(4)	-	1 million	1 thousand
50.	-	Section 54(5)	-	1 million	1 thousand

<b>First Column</b>	<b>Second Column</b>	<b>Third Column</b>	<b>Fourth Column</b>	<b>Fifth Column</b>	<b>Sixth Column</b>
<b>Serial No.</b>	<b>Provision of this Act under section 166</b>	<b>Provision of this Act under section 166</b>	<b>Imprisonment</b>	<b>Fine Rupees</b>	<b>Daily Fine Rupees</b>
51.	-	Section 55(1)	-	1 million	1 thousand
52.	-	Section 55(2)	-	1 million	-
53.	Section 56 (1)	-	-	3 million	3 thousand
54.	Section 56 (2)	-	-	3 million	3 thousand
55.	Section 57 (1)	-	-	1 million	1 thousand
56.	Section 57(2)	-	-	1 million	1 thousand
57.	Section 60 (1)	-	-	1 million	1 thousand
58.	Section 61 (1)	-	5 years	3 million	-
59.	Section 62 (1)	-	5 years	3 million	-
60.	-	Section 63(1)	5 years	3 million	-
61.	Section 64 (2)	-	5 years	5 million	-
62.	Section 64 (3)	-	5 years	5 million	-
63.	Section 64	-	3 years	5 million	-
64.	Section 66 (1)	-	5 years	5 million	-
65.	-	Section 68 (1)	3 years	3 million	-
66.	-	Section 69 (1)	3 years	1 million	-
67.	Section 69 (2)	-	3 years	3 million	-
68.	Section 70 (1) & (2)	-	3 years	3 million	-
69.	Section 71 (1)	-	3 years	5 million	-
70.	Section 71 (2)	-	3 years	5 million	-
71.	Section 71 (3)	-	3 years	3 million	-
72.	-	Section 71(4)	3 years	3 million	-
73.	-	Section 72(1)	-	1 million	1 thousand
74.	-	Section 72(2)	-	1 million	1 thousand
75.	-	Section 72(3)	-	1 million	1 thousand
76.	Section 73	-	3 years	3 million	-
77.	Section 74 (1)	-	3 years	3 million	-
78.	Section 75	-	5 years	5 million	-
79.	Section 76 (4)	-	5 years	5 million	-
80.	Section 76 (7)	-	5 years	5 million	-
81.	Section 78 (3)	-	5 years	5 million	-
82.	Section 79 (5)	-	3 years	3 million	-
83.	Section 79 (8)	-	3 years	3 million	-
84.	Section 80 (4)	-	3 years	3 million	-
85.	Section 81 (1)	-	3 years	3 million	-
86.	-	Section 82(a)	3 years	3 million	-
87.	-	Section 83(1)(b)	3 years	3 million	-
88.	-	Section 83(1)(d)	3 years	3 million	-
89.	Section 85 (1)	-	5 years	5 million	-
90.	Section 86 (1)	-	3 years	3 million	-
91.	Section 86 (3)	-	3 years	3 million	-
92.	-	Section 87	3 years	3 million	-
93.	Section 89 (1)	-	5 years	5 million	-
94.	-	Section 90(1)	3 years	3 million	-
95.	Section 91 (2)	-	3 years	3 million	-
96.	Section 92	-	3 years	3 million	-
97.	-	Section 93(1)	10 years	10 million	-
98.	-	Section 95(2)	10 years	10 million	-
99.	-	Section 95(4)	5 years	5 million	-
100.	Section 96 (8)	-	10 years	10 million	-
101.	Section 109 (1)	-	5 years	5 million	-
102.	-	Section 110(2)	5 years	5 million	5 thousand
103.	-	Section 110(3)	5 years	5 million	5 thousand
104.	-	Section 117(2)	3 years	3 million	-
105.	Section 134	-	5 years	5 million	-
106.	-	Section 150(6)	5 years	5 million	-
107.	-	Section 151	3 years	3 million	-
108.	Section 153(1)	-	5 years	10 million	-
109.	Section 154(1)	-	5 years	10 million	-
110.	Section 154(4)	-	5 years	10 million	-
111.	Section 158(1)	-	3 years	5 million	-

112.	Section 158(2)	-	3 years	5 million	
113.	Section 158(3)	-	5 years	10 million	
114.					
115.	Section 168	-	5 years	5 million	-
116.	Section 170	-	5 years	5 million	-
117.	Section 172	-	10 years	10 million	-
118.	Section 183	-	3 years	3 million	-