

AN ACT

To provide for the establishment of Deposit Protection Fund as a subsidiary of the State Bank of Pakistan, and for the management and control thereof

WHEREAS it is expedient to provide for the establishment, management and control of Deposit Protection Fund as a subsidiary of the State Bank of Pakistan, and for matters connected therewith or ancillary thereto;

It is hereby enacted as follows:-

CHAPTER I, -PRELIMINARY

1. Short title, extent and commencement.-(1) This Act may be called the Deposit Protection Fund Act, 2008.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

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

- (a) "banking company" has the same meaning as defined in section (5) of the Banking Companies Ordinance, 1962
- (b) "board" means the Board of Directors of the Fund;
- (c) "chairman" means the Chairman of the board;
- (d) "director" means a member of the board;
- (e) "Fund" means the Deposit Protection Fund established under section 3;
- (f) "failed institution" means such member that has been notified by the State Bank under sub-section (1) of section 21.
- (g) "Governor" means the Governor and includes an Acting Governor of the State Bank;
- (h) "Managing Director" means the Managing Director appointed under section 10;
- (i) "member" means a banking company or a financial institution which may be notified by the Fund as a member and which is required to pay premium to the Fund under the provisions of this Act.
- (j) "prescribed" means prescribed by rules or regulations made under this Act
- (k) "regulations" means regulations made under this Act;
- (l) "rules" means rules made under this Act;
- (m) "seal" means the common seal of the Fund;
- (n) "State Bank" means the State Bank of Pakistan established under the State Bank of Pakistan Act, 1956 (XXXIII of 1956);

CHAPTER II. - ESTABLISHMENT AND OPERATION OF THE FUND.

3. Establishment and incorporation of the Fund. – (1) As from the date of promulgation of this Act, there shall be established, a corporation to be called Deposit Protection Fund ("Fund").

(2) The Fund shall be a body corporate having perpetual succession and a seal and shall, by the name assigned to it by sub-section (1), sue and be sued.

(3) The head office of the Fund shall be situated in Karachi and it may establish branches, offices and agencies anywhere in Pakistan with the prior approval, in writing, of the board.

4. Fund to be a subsidiary of the State Bank. -The Fund shall be a wholly owned subsidiary of the State Bank.

5. Objective of the Fund.

(1) The objective of the Fund is to compensate the depositors for losses incurred by them to the extent of protected deposits in the event of failure of a member.

(2) All banks scheduled under Section 37 (2) of the State Bank of Pakistan Act, 1956, unless, exempted or excluded by the board, shall compulsorily be members of the Fund and liable to pay the prescribed premium.

6. Business and functions of the Fund. -The Fund under the overall supervision and control of the board, may transact and carry on all or any of the following functions namely:

- (a) Collect premiums and contributions from members and others;
- (b) Manage resources of the Fund;
- (c) Assess claims made against the Fund;
- (d) Make payments to eligible depositors to the extent of protected deposits;
- (e) Recover the payments made from the assets of failed institutions, and
- (f) The carrying on of any business and discharging of any functions and power as are incidental to, or in connection with, the affairs of the Fund, including, without limiting the generality of the foregoing to enter into any contracts or other instruments or any financial or other transactions, issue guarantees and indemnities, borrow moneys, make investments, purchase and hold any property and assets, to hire, employ or retain any person(s) as an employee, agent, or consultant on full time, temporary or on deputation basis and make necessary regulations for the terms and conditions of their service and incur any expenses concerning its functions.

7. Share capital and limited liability.-

- (1) The authorized share capital of the Fund shall be one billion rupees or such other amount as the State Bank may, from time to time, determine by order in writing and shall be divided into shares of one million rupees each.
- (2) The paid-up capital of the Fund shall be such amount as may, from time to time, by order in writing be determined and contributed by the State Bank..
- (3) (3) The share capital may be divided into different kinds and classes as may be prescribed
- (4) The liability of shareholders of the Fund shall be limited to the amount, if any, not fully paid-up on the shares held by them in the capital of the Fund.
- (5) No dividend shall be payable to the shareholders of the Fund.

8. Board of Directors. –

- (1) The general superintendence, direction and management of the affairs and business of the Fund and overall policy making in respect of its operations shall vest in the board which may exercise all such powers and do all such acts, deeds and things that may be exercised or done by the Fund.
- (2) The board shall consist of the following five members:
 - (a) A Deputy Governor of the State Bank as nominated by the State Bank

- (b) Three members appointed by the Central Board of the State Bank; and
 - (c) The Managing Director.
- (3) The meetings of the board shall be held at such times and places as may be prescribed or, until so prescribed, as and when convened by the chairman.
 - (4) No act or proceedings of the board shall be invalid merely on the ground of the existence of any vacancy in, or defect in the constitution of, the board.
 - (5) The quorum of meetings of the board, shall be as may be prescribed or, until so prescribed, shall be three directors.
 - (6) All decisions of the board shall be taken by majority of the directors present and voting at a meeting duly convened and held, and in the event of an equality of votes, the chairman may exercise a casting vote.
 - (7) A resolution in writing signed by all directors shall be as effective as if such resolution had been passed at a meeting of the board.

9. Chairman

- (1) The Deputy Governor of the State Bank shall be the chairman of the board.
- (2) The chairman shall, whenever present, preside over meetings of the board. In the absence of the chairman, another Deputy Governor of the State Bank designated for this purpose by the chairman, shall attend the meeting on behalf of the chairman and preside over such meeting, and if he is not willing to act, or is also absent, the directors present shall choose one of their member to be the chairman of such meeting.

10. Managing Director. –

- (1) The Managing Director shall be appointed by the board.
- (2) The Managing Director shall hold office during the pleasure of the board.
- (3) The Managing Director shall be the chief executive officer of the Fund and shall, subject to the control and direction of the board, administer the affairs of the Fund, and shall have such powers for this purpose as are from time to time delegated to him by the board.
- (4) The salary and other terms and conditions of service of the Managing Director shall be such as the board may determine.
- (5) The Managing Director shall devote his full time and attention to the affairs of the Fund, provided that the Managing Director may, in addition to his duties as the Managing Director, be entrusted with such other duties for such period as the board may, by order in writing, determine.

11. Disqualification's of the board members.- No person shall be appointed or hold office as member of the board-

- (a) Who is a member of the Senate, National Assembly, any Provincial Assembly, or an elected member of a local council or local body constituted under any law relating to local councils or local bodies;
- (b) Who is employed in any capacity in the service of the Federal Government or of a Provincial Government or holds any office or position for which any salary or other remuneration is payable out of public funds;

- (c) Who is a director, officer or employee of any other banking company or of a financial institution or has an interest as a shareholder in any other banking company or financial institution.

Provided that nothing in this clause shall apply where the member of the board is in the employment of the State Bank or where the member of the board is, in addition to holding the office of member of the board, entrusted with additional duties by the board or State Bank;

- (d) who has been convicted of tax evasion under any law, or has been convicted or proceedings are pending against him under section 412 of the Companies Ordinance, 1984 (XLVII of 1984), or section 83 of the Banking Companies Ordinance, 1962 (LVII of 1962), or has been convicted by a court of law for an offence involving moral turpitude;
- (e) person who has been deprived of the right to hold a position of financial responsibility.
- (f) who is in default of payments due from him to any banking company, financial institution, cooperative society, Government Department, Government controlled or managed company or corporation and for the purpose of this clause, default in payment by the spouse, dependent children, and companies, firms and other business concerns under the control or management of a person shall be considered as the default of such person; or
- (g) who holds an office in a political party.

12. Termination of a Member of the Board

A member of the board may be terminated by the State Bank by an order in writing where it is established that:

- (1) any of the circumstances referred to in section 11 apply;
- (2) he has become physically or mentally incapable of carrying out his responsibilities for a continuous period of 6 months or more;
- (3) he has been engaged in a serious misconduct;
- (4) his activities impair the Fund's interests;
- (5) he has been absent from three or more successive meetings of the board without reasonable ground;
- (6) or otherwise State Bank considers him to be unfit to be a member of the board

13. Disclosure of Interest

- (1) Each member of the board and employees of the Fund shall disclose in writing to the board any commercial, financial or other business interest which they or their family members may have, whether directly or indirectly, and which may have adverse implications for the Fund's interest
- (2) In performing their obligations, the persons under subsection (1) shall be bound to place the Fund's interests before their own interests.
- (3) Members of the board shall not participate in any discussion and shall restrain from voting on the issues in which their commercial, financial or other business interests, or those of their families, are involved.

14. Committees of Directors. –

- (1) The board may constitute one or more committees consisting of such number of directors as it may determine.
- (2) The powers, functions, duties and other terms of appointment of a committee of directors shall be such as the board may determine.
- (3) The members of a committee of directors shall hold office for such period as the board may determine.
- (4) The minutes of every meeting of a committee of directors shall be presented before the board at its next meeting following the meeting of the Committee.
- (5) subject to the general and any special directions of the board, a committee of directors shall deal with any matter entrusted to it by the board.

15. Fund's Resources

- (1) The sources of the Fund's resources shall consist of:
 - (a) The paid-up share capital
 - (b) initial premiums from members;
 - (c) periodic premiums from members;
 - (d) return on the investments ;
 - (e) proceeds received from a member's property in case of sale or liquidation;
 - (f) other sources including loans, donations, grants and foreign assistance.
- (2) The Fund shall open and maintain account with State Bank or State Bank of Pakistan, Banking Services Corporation (Bank), established under the State Bank of Pakistan Banking Services Corporation Ordinance 2001.

16. Financing the Fund within the Shortfall of Resources

- (1) If at any time, resources of the Fund fall short of its liabilities under this Act, such shortfall may be covered in one of the following ways:
 - (a) requiring members to pay advance premium
 - (b) increasing the premium;
 - (c) drawing loans in accordance with the terms and conditions prescribed by the board.
 - (d) drawing loans from the State Bank
 - (e) Special allocations from the national budget
- (2) The amount paid in advance under para 1, item 1 shall be adjusted against future premiums.
- (3) The maximum amount of the increased premium contribution under subsection 1, clause b, may not exceed such percentage of the deposit base as prescribed by the board
- (4) Loans drawn by the Fund may be secured by a guarantee issued by the Federal Government, State Bank or by Fund's assets, including Fund's future claims on members for premium contributions.

17. Use of the Fund's Resources

- (1) The Fund's resources shall be used only for payments of protected deposits up to the amounts protected under this Act, for repayment of principal and interest on loans obtained by the Fund, , and for the operating expenses incurred by the Fund.
- (2) The Fund's resources may be invested in:
 - (a) government securities issued or securities guaranteed by the government;
 - (b) any other investment mode as approved by the board

18. Protected Deposits

- (1) The Fund shall guarantee the full payment of funds held on a depositor's accounts with a member regardless of the number and size of the deposits up to an amount determined by the Fund from time to time..
- (2) The above amount shall be inclusive of any interest accrued or return due as at the date of the notification of the State Bank under Section 21 subsection (1)

19. Exceptions

- (1) Protected deposits shall not cover the deposits of
 - (a) persons who have been granted preferential interest or return in deviation from the terms and conditions announced by a member which the member is obliged to apply to all its depositors;
 - (b) members of the board of directors and senior management of a member including chief executive officer and key executives
 - (c) partners of auditing firms responsible to certify the member's financial statements
 - (d) persons having acquired rights to a deposit after the State Bank notification under Section 21 subsection (1)
 - (e) .spouse, dependent lineal ascendants and descendants and dependent brothers and sisters of the persons specified in items (b), (c) and (d) above;
 - (f) any member whose deposits are in its name and on its account;
 - (g) government or government institutions;
 - (h) or any other persons or institutions as specified by the board
- (2). Protected deposits shall not cover deposits arising out of or related to transactions or actions constituting 'money laundering' within the meaning of Anti-Money Laundering Ordinance 2001 if the offender has been convicted and the sentence is effective.

20. Determining the Size of Deposits

- (1) The total amount of a member's liability to a depositor shall be determined by adding up all the depositors' deposits, including interest accrued or return due as at the date of notification under subsection (1) of section 21. In establishing the member's total liability to a depositor, foreign currency deposits shall be taken at equivalent amount, at the exchange rate of the State Bank at the date of the State Bank's notification under subsection (1) of section 21.
- (2) In the event of a joint deposit, each person's portion shall be taken into account in establishing the total amount of that person's deposits held by a member. If it is not otherwise provided for in the deposit contract, it shall be assumed that the depositors' portions are equal.
- (3) In the event of a deposit contract in favor of a third party, the person in whose favor the deposit has been opened (the beneficiary) shall be entitled to receive a payment from the Fund unless it is otherwise provided for in the contract. If there is more than one beneficiary, the joint depositor rules shall apply.
- (4) A deposit which is encumbered or serves as collateral shall be included in the adding up under subsection (1) and the amount due on the deposit shall not be paid to the titleholder of the deposit until said encumbrance or security has been lifted. Where an order issued by a court in respect of a deposit referred to in the first sentence is

effective, the Fund shall pay the amount due on the deposit to the person who is designated in the order as the person authorized to receive the deposit amount.

21. Terms and Procedures for Reimbursement of Protected Deposits

- (1) The State Bank shall issue a notification to the effect that normal operations of a member has been closed or suspended as a result of its insolvency or any judicial or regulatory action.
- (2) The Fund shall pay the liabilities of the failed institution to its depositors up to the amount protected, in the cases where the State Bank issued a notification under subsection (1)
- (3) The Fund shall owe no interest on protected amounts.
- (4) The Fund shall pay the protected amount of deposits in cash, or through transfer of deposit to any banking company or in any other way as determined by its board.
- (5) Within 15 days from the notification of the State Bank under subsection (1), the Fund shall collect necessary information and cause the same to be published in at least two daily newspapers having wide circulation, information about the date after which depositors will be paid from the Fund and the procedure for payments.
- (6) Payments from the Fund shall begin no later than 30 days from the date of the notification of the State Bank under subsection (1)
- (7) For foreign currency denominated deposits, the depositor shall be paid the rupee equivalent of the protected amount at the exchange rate of the State Bank on the day of the notification under subsection (1).
- (8) A member's liability to its depositors shall be reduced proportionally by the amounts paid by the Fund to depositors and shall be replaced by an equivalent liability to the Fund.
- (9) The board shall regularly notify the liquidator or the assignee in bankruptcy about the amount paid by the Fund to any depositor(s).
- (10) Depositors' claims in excess of the protected amount received from the Fund shall be settled from the member's property, pursuant to applicable law.

22. Delegation of powers and appointment of attorneys. –

(1) The board may, for the purpose of ensuring smooth and efficient functioning of the Fund and facilitating transactions of its daily business, by resolution, delegate to the Managing Director or any other executive of the Fund, subject to such conditions and limitations, if any, as may be specified therein, such of its powers and duties under this Act as it may deem necessary.

(2) The board may, from time to time, by resolution appoint any company, firm or person to be the attorney of the Fund for such purposes and with such powers, authorities and discretions, not exceeding those vested in or exercisable by the board under this Act and for such period and subject to such conditions as the board may think fit, and any such resolution may contain such provisions for the protection and convenience of persons dealing with any such attorney as the board may think fit.

23. Accounts and audit. –

- (1) The accounting year of the Fund shall commence on the first day of July and end on the thirtieth day of June.

- (2) The Fund shall maintain proper accounts and other records to reflect true and fair view of its state of affairs and prepare annual statement of accounts, including the profit and loss accounts and balance sheet.
- (3) The accounts of the Fund shall be audited by one or more auditors who shall be chartered accountants within the meaning of the Chartered Accountants Ordinance, 1961 (XII of 1961), to be appointed by the State Bank.
- (4) Every auditor shall be supplied with a copy of the annual statement of accounts and it shall be the duty of the auditor to examine the same together with the accounts and vouchers relating thereto, and every auditor shall have a list delivered to him of all books kept by the Fund and shall, at all reasonable times, have access to books, accounts and other documents of the Fund and may employ accountants or other persons to assist him in auditing such accounts and may, in relation to such accounts, examine the Managing Director, directors and executives of the Fund.
- (5) The auditors shall submit a report to the board and to the State Bank regarding the annual statement of accounts, and in any such report they shall state whether in their opinion the statement of accounts is a full and fair statement of accounts containing all necessary particulars and is properly drawn up so as to exhibit a true and correct view of the state of affairs of the Fund and, in case they have called for any explanation or information from the Managing Director or the board, whether it has been given and whether it is satisfactory.
- (6) The board may, in addition to the audit under sub-sections (3) and (4), cause to be carried out internal audit of the Fund's accounts and the internal auditors' reports shall be submitted to the board.

24. Power of the State Bank to give directions-

- (1) Where the State Bank is satisfied that.-
 - (a) in the public interest; or
 - (b) to prevent the affairs of the Fund being conducted in a manner detrimental to the interests of its beneficiaries or in a manner prejudicial to the interests of the Fund or of the State Bank; or
 - (c) to secure the proper management of the Fund generally,

it is necessary to issue directions to the Fund, the State Bank may, from time to time, issue such directions as it may deem fit and the Fund shall be bound to comply with such directions.
- (2) The State Bank may, on representation made to it, or on its own motion, modify or cancel any direction issued under sub-section (1) and in so modifying or canceling any such direction may impose such conditions as it thinks fit, subject to which the modifications or cancellation shall have effect.

CHAPTER III – MISCELLANEOUS

25. Duty of Officers and servants to maintain secrecy. –

- (1) Except in the performance of his duties under this Act, every executive or other employee of the Fund shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of the Fund and of the State Bank coming to his knowledge and not published by the Fund or by the State Bank and with regard to all matters relating to the financial or monetary affairs of any banking company, institution,

person, body or persons, any Government or authority whether in Pakistan or outside Pakistan that may come to his knowledge in the performance of his duties.

- (2) Every such executive or other employee who communicates any such matter, except when required by law so to do, or in the discharge of his duties as such, shall be guilty of an offence punishable with imprisonment of either description for a term which may extend to three years, or with fine which may extend to one hundred thousand rupees, or with both.
- (3) No court shall take cognizance of any offence punishable under this section except upon a complaint in writing by a person authorized in this behalf by the board.

26. Officers to be public officers. –

- (1) For the purposes of Article 7 of the Qanun-e-Shahadat Order, 1984 (P.O. No. 10 of 1984), the provisions of Part IV of the Code of Civil Procedure, 1908 (Act V of 1908), and the provisions of rule 27 of Order V, and rule 52 of Order XXI of the said Code any person in the service of the Fund acting in his capacity as such shall be deemed to be a public officer.
- (2) The provisions of Article 6 of the Qanun-e-Shahadat Order, 1984 (P.O. No.10 of 1984), shall apply to the unpublished records of the Fund and the Managing Director shall be deemed to be the officer or head of the department concerned.

27. Persons in the service of the Fund to be public servants. – Every person in the service of the Fund shall be deemed to be a public servant within the meaning of section 21 of the Pakistan Penal Code (Act XLV of 1860).

28. Priority of Payment

From the date of the notification made by the State Bank under subsection (1) of section 21, the claim of Fund shall be deemed to have filed and proved and payment shall be made to the Fund in the same manner as to a depositor under Section 58 subsections (1), (2), (3), (4) of the Banking Companies Ordinance, 1962 to the extent of protected amounts regardless of the amount and the date on which the Fund effected payments on the protected amount to any depositor and the Fund shall subrogate all the rights of protected depositors under the said section 58. For the avoidance of doubt, the limit of one hundred thousand rupees provided in the above referred Section 58 shall not be applicable to the claims of the Fund towards the failed institution.

29. Production of unpublished records of the Fund, etc. –

- (1) No court, tribunal or other authority shall be entitled to compel the Fund or any person in the service of the Fund to produce or, as the case may be, give any evidence derived from, any unpublished records of the Fund.
- (2) No court, tribunal or other authority shall permit any one to produce or give evidence derived from, any unpublished records of the Fund, except with the prior permission in writing of the Managing Director who may give or withhold such permission as he thinks fit.
- (3) Notwithstanding anything contained in this Act or any other law for the time being in force, a report prepared by the Fund on a member under any law for the time being in force shall be deemed to be unpublished for the purposes of sub-sections (1) and (2) even if a copy of such report has been supplied to the member to which the report pertains, the State Bank or the Federal Government.

30. Pension of Fund employees to be exempt from attachments, etc. –

Notwithstanding anything contained in any law for the time being in force, pensions granted by the Fund to its executives and other employees shall not be liable to seizure, attachment or sequestration by process of any court at the instance of a creditor, for any demand against the pensioner or in satisfaction of a decree or order of any such court.

31. Exemption from taxes. – Notwithstanding anything contained in the Wealth Tax Act, 1963 (XV of 1963), and the Income Tax Ordinance, 2001 (XLIX of 2001) or any other law for the time being in force relating to wealth tax, income tax or super tax, the Fund shall not be liable to pay any wealth tax, income tax or super tax on its income or wealth.

32. Power to make rules. – The State Bank may, by notification in the official Gazette, make rules, consistent with the provision of this Act, for carrying out the purposes of this Act.

33. Power to make regulations. –

- (1) The Fund may, subject to the prior approval of the State Bank, make regulations, not inconsistent with the provisions of this Act and the rules made thereunder, to provide for all matters for which provision is necessary or convenient for the purpose of giving effect to the provisions of this Act.
- (2) Where any provision of the regulations is inconsistent with any provision of the rules, the provision of the rules shall prevail.
- (3) Where the State Bank considers it expedient so to do, it may be order in writing, direct the Fund to make any regulations or to amend or rescind any regulations already made, within such period as it may specify in this behalf.
- (4) If the Fund fails to comply with any direction of the State Bank under sub-section (3) within the specified period, the State Bank may make, amend or rescind any regulation directed by the State Bank to be made, amended or rescinded, and a regulation so made, amended or rescinded by the State Bank shall be deemed to have been made, amended or rescinded by the Fund in accordance with the provisions of this section and shall have effect accordingly.

34. Protection of action taken in good faith. – No suit or other legal proceedings shall lie against the Fund or the State Bank or any director or officer of the Fund or the State Bank for anything done or intended to be done in pursuance of this Act or of any rules, regulations or orders made thereunder unless done in bad faith.

35. Liquidation of the Fund. – The Fund shall not be placed in liquidation save by order of the State Bank and in such manner and on such terms and conditions as the State Bank may direct.

36. Act to override. – Except the application of any provision of the Act to the Fund as a subsidiary of the State Bank, this Act shall have effect notwithstanding anything contained in any law for the time being in force or in any agreement, contract, or other applicable documents or instrument.

37 The Banking Companies Ordinance, 1962 (LVII of 1962), shall not apply to the Fund.

38. Removal of difficulties. – If any difficulty arises in giving effect to any of the provisions of this Act, the State Bank may make such order not inconsistent with the provisions of this Act, as may appear to it to be necessary for the purposes of removing the difficulty: Provided that no such power shall be exercised after the expiry of two years from the commencement of this Act.

39. Repeal: Subsection (4) of the Section 5 of the Banks (Nationalization) Act, 1974 (XIX of 1974) is hereby repealed.