

# Draft Amendments in the Banking Companies Ordinance, 1962

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further to amend the Banking Companies Ordinance, 1962

WHEREAS it is expedient to further amend the Banking Companies Ordinance, 1962, (LVII of 1962) for the purposes hereinafter appearing;

It is hereby enacted as follows:

**1. Short title and commencement:**

- (1) This Act may be called the Banking Companies (Amendment) Act, 2012
  - (2) It shall come into force at once.
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**2. Amendment of Section 3-A:** In the Banking Companies Ordinance, 1962 (LVII of 1962), hereinafter referred to as the said Ordinance, in section 3A:

- (a) The following shall substitute the existing heading of section 3A namely:

**“Limited application of the Ordinance to certain financial institutions and non-operating bank holding companies.”**

- (b) The following new sub-section (3) shall be added after sub-section (2) namely,--

(3) The provisions of sections 13, 14, 14A, 14B, 15, 15A, 15B, 15C, 16, 17, 18, 19, 20, 21, 23, 27, 29, 30, 32, 33, 33A, 34, 35, 36, 37, 40, 40A, 40B, 40D, 41, 41A, 41B, 41C, 41D, 42, provisions of Part III and Part IV, sections 83, 88, 89, 90 and 94 of this Ordinance, with such modifications, as the State Bank may determine from time to time, shall apply to non-operating bank holding companies (NoBHCs).

**Explanation:** The provisions made applicable by sub-sections (1) & (3) shall be in addition to the provisions of this Ordinance which are otherwise expressly applicable to such entities.

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**3. Amendment of Section 5:-**In the Ordinance, in section 5,

(a) After clause (a) the following new clause shall be inserted, namely:-

(aa) "associated company" and "associated undertaking" shall have the same meaning as assigned thereto under the Companies Ordinance 1984 (XLVII of 1984).

(b) After clause (c), the following new clause namely (cc) shall be inserted namely

(cc) "banking group" means

- i. a group consisting of a banking company, a NOBHC or an institution specified in section 3A and one or more companies or undertakings controlled by that banking company, NOBHC or institution;
- ii. a group consisting of a banking company, or NOBHC, or an institution specified in section 3A and one or more such companies or undertakings, formed for one or more purposes referred to in sub-section (1) of section 23 of the Ordinance, as are under common control.

(c) The existing clause (ee) shall be renumbered as clause (eea) and after the existing clause (e), the following new clause (ee) shall be inserted namely:-

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

(d) After clause (ffa), a new clause namely (ffb) shall be inserted namely:

(ffb) "functional supervisor" means the primary regulatory body of an entity, which is a part of a banking group, under relevant laws for the time being in force.

(e) The existing clause (gg) shall be renumbered as (gga) and after the existing clause (g) the following new clause (gg) shall be inserted, namely:-

(gg) "independent director" means a director of a banking company, NOBHC or an institution specified in section 3A who is not affiliated, directly or indirectly, with the company, NOBHC or the institution or any of its sponsors, and he:

- i. has not been employed by such banking company, NOBHC or institution within the last five years;
- ii. has not been an employee or affiliate of any present or former external auditor, consultant, legal advisor of such banking company, NOBHC or institution within the last three years;
- iii. has not been an executive officer or employee of a subsidiary or associate

company or undertaking of such banking company, NOBHC or institution or where directors of such banking company, NOBHC or institution has, directly or indirectly through family members, substantial beneficial interest;

- iv. has not been employed by a company of which an executive officer of such banking company, NOBHC or institution has been a director within the last three years;
- v. is not affiliated with a not-for-profit entity that received contributions from the banking company, NOBHC or the institution exceeding the greater of 10 million or 2 percent of such charitable organization's consolidated gross revenues during the current fiscal year or any of the last three completed fiscal years.

(f) After the existing clause (h), the following new clauses (hh) and (hha) shall be inserted namely:-

(hh) "non-operating bank holding company" (NOBHC) means a body corporate, licensed by the State Bank, that:

- i. is a public limited company, incorporated in Pakistan,
- ii. owns more than fifty percent voting shares of a banking company or an institution specified in section 3A(1), and
- iii. does not carry on a business other than a business consisting of the ownership or control of other undertakings engaged in businesses given in Sub-section (1) of section 23 of the Ordinance.

(hha) "person" includes a Hindu undivided family, a firm, an association or body of individuals, whether incorporated or not, a company and any other juridical person.

(g) After clause (mm), the following new clause (mma) shall be inserted namely:

(mma) "sponsor" means a person owning; individually or jointly with his family members, his subsidiary, partnership firm of which he is a partner, private company of which he is a member or undertaking where he owns or exercises twenty percent or more voting powers; five percent or more shares in a banking company, a NOBHC or an institution specified in section 3A.

**Explanation:** For the purpose of this clause:

"family member" means to include spouse, lineal ascendants and decedents and dependent brothers and sisters.

(h) The Explanation to existing clause (o) shall be omitted

(i) After existing clause (o), the following new clause (p) shall be inserted, namely:

(p) "undertaking" means any concern, institution, establishment or enterprise in

any way engaged, directly or indirectly, in the production, supply or distribution of goods, or in the provision or control of any services.

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**4. Amendment of Section 14:** In section 14 of the said Ordinance, sub-sections (4) and (5) shall be renumbered as (5) and (6), respectively; the following shall substitute the existing sub-section (3) and a new sub-section (4) shall be added as follows:

(3) Every sponsor, director, chairman, managing director or chief executive officer, by whatever name called, of a banking company, an NOBHC or an institution specified in section 3A shall furnish to the State Bank through that banking company or NOBHC or institution specified in section 3A, as the case may be, returns containing full particulars of the extent and value of his holding of shares, whether directly or indirectly, in the banking company, NOBHC or any other entity or undertaking and of any change in the extent of such holding or any variation in the rights attaching thereto and such other information relating to those shares as the State Bank may, by order, require and in such form and at such time as may be specified in the order.

(4)

(a) No person shall be a sponsor, director, or chief executive, by whatever name called, of a banking company, NOBHC or an institution specified in section 3A unless that person is approved so under the fitness and propriety criteria as prescribed by the State Bank. Where a person acquires five percent or more shares in a banking company, NOBHC or the entity by the operation of law, the person shall apply to the State Bank for approval within thirty days of acquiring such ownership. Moreover, no sponsor shall enter into any subsequent agreement or arrangement to dispose of or acquire any more voting shares in such banking company or entity without the prior approval from the State Bank.

Provided that directors, chief executive officers and shareholders qualifying as sponsors at the date of coming into force of this section, shall not require the approval from the State Bank unless they are in the contravention of provisions of this section, any provision of the Ordinance, or regulations and instructions issued under the Ordinance.

(b) In order to satisfy itself, the State Bank may gather and evaluate information, through such means as it may deem necessary, about the fitness and propriety of a person as director, sponsor or chief executive officer.

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**5. Insertion of new Sections** - In the said Ordinance, after section 14 the following new sections shall be added, namely:-

#### **14A. A banking company to be fully owned by a NOBHC**

(1) Except for as provided in sub-section (3), every banking company incorporated in Pakistan, shall be the wholly owned subsidiary of a NOBHC. Sponsors of any banking company, incorporated in Pakistan, which is not a wholly-owned subsidiary of a NOBHC or any banking company which owns substantial interest in any undertaking shall ensure compliance with the provisions of this sub-section within three years of the coming into force of this section.

(2) All companies or undertakings, engaged in the business of financial services, which are under the common control of sponsor(s) who, jointly or severally, also control a NOBHC shall be brought under the control and ownership of the NOBHC. The sponsors of the NOBHC shall comply with the provisions of this section within three years of the date of coming into force of this section or within such extended period, not exceeding two years, as may be specified by the State Bank.

(3) The provisions of sub-section (1) shall not apply where -

- a. fifty percent or more of the paid up share capital of a banking company is owned by:
  - i. The Federal or a Provincial Government, or
  - ii. A body corporate, incorporated outside Pakistan and licensed and regulated by a financial sector regulator, engaged in the business of banking or holding and owning of other financial institutions; or
- b. the State Bank is satisfied that
  - i. the banking company does not own substantial interest in any other company or undertaking; and
  - ii. the banking company and its sponsors who control the banking company, severally or jointly, together with their associates and family members, do not control any other company or undertaking engaged in the business of financial services.

#### **14B. Exemption of non-operating bank holding companies from certain laws**

- (1) Notwithstanding anything contained in this Ordinance and any other law for the time being in force, any action undertaken to comply with the provisions of section 14A of this Ordinance, shall be:
  - i. exempt from any fee, duty or tax in respect of the establishment of NOBHC or banking company, authorized capital and allotment of share capital,
  - ii. a non-taxable event under the Income Tax Ordinance, 2001, the Sales Tax Act, 1990, Federal Excise Act, 2005 or any other law for the time

being in force.

- (2) Notwithstanding anything contained in any other law for the time being in force or any agreement enforceable at the time, any scheme of arrangement prepared to comply with the provisions of section 14-A shall be subject to the approval of the State Bank. Before it is submitted to the State Bank for approval, the scheme involving transfer of controlling shareholdings: -
- i. in a banking company or any of its subsidiary to NOBHC or conversion of a banking company into NOBHC and formation of new banking company shall be placed before the shareholders of the banking company; or
  - ii. in any other entity to a NOBHC, shall be placed before the shareholders of the NOBHC
- and approved by a resolution passed by majority in number representing two thirds in value of the shareholders of the said banking company or NOBHC , as the case may be, present either in person or by proxy at a meeting called (in conformity with the provisions of sub-section(2) of section 48 of the ordinance) for the purpose.
- (3) Where a shareholder or group of shareholders, have voted against or given notice in writing, at or before the meeting, of their dissent on the value of shares proposed to be acquired by NOBHC or the value of purchase consideration for such shares, the facts and details of such disagreement shall be submitted to the State Bank along with the proposed scheme of arrangement. The State Bank may determine the value of shares and or purchase consideration thereof different from as proposed in the scheme. The value as determined by the State Bank while approving the reorganization scheme shall be final for all purposes.
- (4) Any scheme of arrangement prepared to comply with the provisions of section 14-A shall be exempt from the provisions of the Competition Act, 2010 and section 208 of the Companies Ordinance, 1984;

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**6. Amendment of Section 15-** In the said Ordinance, in section 15, after sub-section (3), the following new sub-section (4) shall be inserted, namely,

(4) Notwithstanding any provision contained to the contrary in this Ordinance or the Companies Ordinance, 1984 or any other law for the time being in force, the State Bank may specify the percentage of independent directors, directors from the same family, and executive directors on the board of a banking company, NOBHC or institution specified in section 3A.

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**7. Amendments of Section 23:** In the said Ordinance, the following shall substitute the

existing section 23, namely

**23. Restriction on the nature of subsidiary companies.**—(1) A NOBHC shall not form, acquire or hold any subsidiary company except a subsidiary company formed for one or more of the following purposes with the prior approval of the State Bank, namely:—

- a. Carrying on of banking business;
- b. Carrying on of business of insurance;
- c. carrying on of business which a non-bank finance company can carry out under the provision of section 282A of the Companies Ordinance, 1984;
- d. the carrying on of banking and financial services business strictly in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah;
- e. Carrying on of microfinance banking business under the Microfinance Institutions Ordinance, 2001;
- f. the undertaking and executing of trusts;
- g. carrying on of brokerage business under the Securities and Exchange Ordinance, 1969;
- h. the undertaking of the administration of estates as executor, trustee or otherwise;
- i. the carrying on of business of modaraba under the provisions of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance 1980 (XXXI of 1980);
- j. the providing of safe deposit vaults;
- k. the carrying on of the business of banking exclusively outside Pakistan;
- l. carry on any form of business permitted by section 7;
- m. such other purposes as are incidental to the business of banking or as are permitted by the State Bank.

Further, a banking company as mentioned in clause (a) of sub-section (3) of section 14A shall not form, acquire or hold any subsidiary company except a subsidiary company formed, with the prior approval of the State Bank, for one or more of the purposes mentioned in clause (c), (d), (e), (f), (g), (h), (i), (j), (k), (l) and (m) above.

(2) Save as provided in sub-section (1), no banking company shall hold shares in any company whether as absolute owner, pledgee, or under any sort of lien or charge, of an amount five per cent or more of the paid-up share capital of that company or five percent of its own paid-up share capital and reserves, whichever is less.

A banking company which is on the date of commencement of this Act holding any shares in contravention of the provisions of this sub-section shall not be liable to any penalty if it reports the matter without delay, to the State Bank and if it brings its holding of shares into conformity with the said provision within such period, not exceeding three years from the commencement of this section, as the State Bank may think fit to allow.

(3) Save as provided in sub-section (1) and notwithstanding anything contained in sub-section (2), a banking company or a NOBHC shall not hold shares, whether as absolute owner, pledgee, or under



any sort of lien or charge, in any company in the management of which any managing director or manager of the banking company is in any manner concerned or interested.

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**8. Amendment of Section 29:** In the said Ordinance, in section 29, after sub-section (4) a new sub-section (5) shall be added, namely:

(5) A NOBHC and banking company as mentioned in clause (a) of sub-section (3) of section 14A shall ensure that all the entities controlled by it maintain adequate liquidity in accordance with the requirements, if any, specified by the State Bank or functional supervisor, as the case may be, on stand-alone as well as on consolidated basis.

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**9. Amendment of Section 35.** In the said Ordinance, in section 35, **the following new sub-sections (8) and (9) shall be added, namely:**

(8)

(a) The State Bank may require a banking company, a NOBHC or an institution specified in section 3A to appoint common auditor(s) for one or more of its subsidiaries from amongst the panel of auditors maintained by the State Bank for the purpose under sub-section (1). The auditor(s) shall also give their opinion on the consolidated financial statements of the banking group and banking company, or as the case may be, NOBHC or institution specified in section 3A in addition to their opinion on the stand alone financial statements of the subsidiaries.

(b) The State Bank may require auditor(s) to give their opinion or report on specific matters of a banking company, NOBHC, or an institution specified in section 3A and any or all of the subsidiaries of the banking company, NOBHC or the institution specified in section 3A.

(c) The State Bank may designate auditor(s) for special audit of a banking company, NOBHC, or an institution specified in section 3A and any subsidiaries of such banking company, NOBHC or the institution specified in section 3A, at the cost of the entity to be audited or the holding company.

The auditor(s) shall submit their report directly to State Bank and such reporting shall not constitute breach of confidentiality under any law for the time being in force.

(9)

In addition to the matters which, under the sub-section (7) and (8) and the guidelines issued by the State Bank under sub-section (3) and (6), the auditor is required to state in his report, he shall also state,

(a) whether or not the information and explanations required by him in respect of all the

- subsidiaries and associates of a banking company, NOBHC or institution specified in section 3A have been found to be satisfactory;
- (b) whether or not the transactions of NOBHC that have come to his notice have been within the powers of the company;
- (c) whether or not the financial statements of subsidiaries of banking company, NOBHC or institution specified in section 3A have been duly audited by auditors and any qualification or concern therein have been incorporated in the audit report given on the consolidated financial statements of the controlling entity;
- (d) any other matter which should be brought to the notice of the shareholders of the controlling banking company, NOBHC or institution specified in section 3A.

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**10. Insertion of new Sections** - In the said Ordinance, after section 40A, the following new sections shall be inserted namely:

**40B. The State Bank to act as lead supervisor**

Notwithstanding anything contained in any other law for the time being in force, the State Bank shall act as lead supervisor in respect of all banking groups comprising a banking company, NOBHC or institution specified in section 3A and the undertakings or institutions controlled by such banking company, NOBHC or institution specified in section 3A. Functional supervisor(s) shall assist the lead supervisor in the resolution of supervisory issues of such entities of a banking group as are regulated by the functional supervisor under the relevant laws for the time being in force.

**40C. On-going Coordination between supervisors**

(1) Where companies or undertakings of a banking group are regulated 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 body in certain matters, an effective framework for coordination between State Bank and another regulatory or governmental body may be established on an on-going basis to promote adequate surveillance and supervision of the banking group 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.

(2) The State Bank may enter into any arrangements for mutual assistance or exchange of information on reciprocal basis, where appropriate, with organisations outside Pakistan that have responsibilities under law for the regulation and supervision of financial institutions etc.

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**11. Amendments of Section 41:** In the said Ordinance, following para shall be inserted at the end of sub-section (1) of section 41:

Save as provided above and in sub-section (2) of this section, the State Bank may, from time to time, issue such directions and instructions in respect of the operations of all or part(s) of the banking group as it deems necessary to safeguard the public interest, or prevent the affairs of banking group being conducted in manner detrimental to the interest of the depositors or to secure the proper management of the banking group entities, and the controlling banking company, NOBHC or institution specified in section 3A shall be bound to ensure compliance with such directions and instructions.

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**12. Amendments of Section 43-C:**

The explanation to section 43-C shall be deleted.

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**13. Amendments of Sections 91A and 93A:**

The words '(ee)' and '(gg)' shall be amended as '(eea)' and '(gga)', respectively in section 91A and 93A of the Ordinance.

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**14. Transitional provisions**

(1) Every banking company or an institution specified in section 3A or a sponsor, director or chief executive officer of a banking company or an institution specified in section 3A holding a valid license, permission, or approval issued by the State Bank or any other authority shall be deemed to be valid under this Ordinance unless the State Bank may require and issues fresh license, permission, or approval, as the case may be.

(2) The State Bank may make provisions in regulations to establish transition arrangements.

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