

[AS INTRODUCED IN THE SENATE]

A

Bill

to provide for the Rehabilitation and Restructuring of Corporate Entities

WHEREAS it is expedient to provide for the rehabilitation, reorganization and restructuring of distressed corporate entities and their businesses so as to encourage economic growth and development;

It is hereby enacted as follows:—

1. Short title, extent and commencement.— (1) This Act shall be called the Corporate Rehabilitation Act, 2015.

(2) It extends to the whole of Pakistan.

(3) This section shall come into force at once and the remaining provisions of this Act shall come into force on such date as the Federal Government may, by notification in the official Gazette, appoint and different dates may be so appointed for different provisions of this Act.

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

(a) “administrator” means an administrator appointed under section 24;

(b) “Board” means the Corporate Rehabilitation Board established under section 58;

(c) “charge” includes mortgage, lien, hypothecation, pledge, assignment or any other security interest whether legal or equitable, registered or unregistered;

(d) “claim” means, –

(i) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, disputed, undisputed, legal, equitable, secured or unsecured; or

(ii) right to an equitable remedy for breach of performance if such breach gives rise to a right of payment whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, disputed, undisputed, secured or unsecured;

- (e) "collateral" includes any asset, property, right, claim, entitlement, share, undertaking, guarantee, agreement, instrument, charge or document used or meant as security for a financial asset;
- (f) "Commission" means the Securities and Exchange Commission of Pakistan; established under the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);
- (g) "Court" means the High Court having territorial jurisdiction;
- (h) "creditor" means an entity that has a claim against the debtor,—
 - (i) that arose at the time of or before the order of relief concerning the debtor; or
 - (ii) is deemed by this Act to have arisen at the time of or before the order of relief concerning the debtor;
- (i) "Creditors Committee" means the committee appointed under section 33;
- (j) "custodian" means, —
 - (i) receiver or trustee of the property of the debtor appointed in a case or proceeding not initiated under this Act;
 - (ii) authorised party under a general assignment for the benefit of the debtor's creditors; or
 - (iii) trustee, receiver or agent under applicable law or under a contract, appointed or authorized to take charge of property of the debtor for the purpose of enforcing a charge against such property or for the purpose of general administration of such property for the benefit of the debtor's creditors;
- (k) "debtor" means a company specified under section 7 of this Act;
- (l) "debtor in possession" means a debtor against which a case has commenced under this Act and which has been allowed to continue in possession and control of the estate;
- (m) "entity" includes person, estate, trust or Government Agency;
- (n) "estate" means the property specified in section 43 of this Act;

3

- (o) "executory contract" means a contract pursuant to which the obligations of both parties are unperformed to the extent that the failure of either party to complete performance will constitute a material breach of such contract;
- (p) "financial asset" includes any short, medium or long-term interest and non-interest bearing loan, finance, advance, lease, installment, term finance certificate, participation term certificate, modaraba, musharaka, ijara, profit and loss sharing agreement, redeemable capital, guarantee or contractual right to receive payment of money in respect of sums advanced or committed to an obligor by a financial institution;
- (q) "financial institution" means a financial institution defined under paragraph (a) of section 2 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (XLVI of 2001);
- (r) "Government Agency" means the Federal Government and Provincial Governments or a department, agency or a body corporate set up or established by the Federal Government or the Provincial Government;
- (s) "insider" means such persons who by virtue of their association with the debtor have such material knowledge regarding the debtor which is not available to the general public and includes, –
 - (i) directors, chief executive, sponsors of the debtor;
 - (ii) senior salaried employees of the debtor occupying managerial positions;
 - (iii) any person who, directly or indirectly owns ten percent or more voting security of the debtor;
 - (iv) relative of a director, officer or person in control of the debtor; and
 - (v) associated companies and associated undertakings of the debtor and their directors;
- (t) "insolvency clause" means a provision in a contract, lease or law that gives an option to effect a forfeiture, modification or termination of the debtor's interest in property or is otherwise conditioned on or relates to, -
 - (i) the insolvency or financial condition of the debtor;

- (ii) the commencement of a case under this Act;
 - (iii) the appointment of or taking possession by an administrator, in a case under this Act or a custodian before such commencement; or
 - (iv) the satisfaction of any penalty or provision relating to a default arising from any failure by the debtor to perform non-monetary obligations under an executory contract or unexpired lease;
- (u) “Insolvent” means financial condition where the entity’s debts are greater than all of such entity’s property, at a fair valuation, exclusive of property transferred, concealed or removed with intent to hinder, delay or defraud such entity’s creditors and a company shall also be deemed to be insolvent if, –
- (i) the debtor is not paying its debts except to the extent such debts are the subject of a bona fide dispute; or
 - (ii) within one hundred and twenty days before the date of the filing of the petition under this Act, a custodian was appointed or took possession of substantially all property of the debtor for the purpose of enforcing a charge against such property:

Provided that in determining whether or not there is a bona fide dispute, the Court shall not take into account any claim or counter-claims that the debtor has filed or may file, against the holder of that claim and any such claim or counter-claims may be taken into consideration by the Court when examining a proposed plan of rehabilitation;

Illustrations:

- (i) Bank A files a petition against company B for failure to repay a loan. B disputes the claim on the basis that B suffered damages due to A’s failure to extend additional or other loans to B. There is no bona fide dispute with respect to A’s claim against B.
- (ii) Bank A files a petition against company B for failure to repay a loan. B disputes the claim only on the basis that bank A has charged excessive mark-up. There is no bona fide dispute with respect to A’s claim to the extent that the principal amount of the loan remains unpaid as well as to the extent the Court determines that mark-up legitimately owed and charged has not been paid.

- (iii) Bank A files a petition against company B for failure to repay a loan. B disputes the claim on the basis that it has already repaid the entire amount due under the loan agreement. There is a bona fide dispute with respect to A's claim against B.
- (iv) Bank A files a petition against company B for failure to repay a loan of Rs.1,000,000. Company B claims that it has repaid Rs.300,000. There is a bona fide dispute only with respect to the amount of Rs.300,000.
- (v) "liquidation value" of a claim means the value likely to be received by a creditor if the debtor is wound up and in the case of a secured creditor the liquidation value means the value likely to be received by a secured creditor for its claim through recovery proceedings;
- (w) "non-performing asset" means a financial asset held on the books of a financial institution with respect to which the obligor has been in arrears for more than one year on any payment obligation and includes all security interests with respect to the collateral thereof;
- (x) "obligor" means any individual, proprietorship, partnership, trust, company or other entity that has, with respect to a financial asset, a contractual or legal obligation to make payment, effect performance, provide security or collateral, whether as principal, surety, guarantor or otherwise and whether such obligation is primary, secondary, matured or contingent;
- (y) "order of relief" means an order of the Court that a debtor is insolvent;
- (z) "Ordinance" means the Companies Ordinance, 1984 (XLVII of 1984);
- (za) "person" includes an individual, partnership, firm and company but does not include a Government agency;
- (zb) "plan" means a plan of rehabilitation filed in accordance with section 48;
- (zc) "prescribed" means prescribed by rules or regulations made under this Act;
- (zd) "regulations" means regulations made by the Commission under this Act;

- (ze) "relative" means husband, wife, ancestor, lineal descendant, brother or sister;
- (zf) "rules" means rules made under this Act;
- (zg) "security interest" means a guarantee, charge, mortgage, lien, hypothecation, pledge, assignment or any other security interest in relation to collateral;
- (zh) "transferor" means the financial institution, which enters into the transfer, and assignment agreement provided in paragraph (a), sub-section (1) of section 73;
- (zi) "utility service" includes the following services, –
 - (i) electricity;
 - (ii) natural gas;
 - (iii) water; or
 - (iv) telephone and other communication services, such as internet access, mobile telephone, etc.; and
- (zj) "vesting date" means the date of signing of the transfer and assignment agreement between a financial institution and a Corporate Restructuring Company as provided in paragraph (a), sub-section (1) of section 73.

(2) The words and expressions used but not defined in this Act shall have the same meaning as assigned to them in the Companies Ordinance, 1984 (Ordinance XLVII of 1984).

3. Act to override other laws, contracts, instruments, memorandum and articles.— Save as otherwise expressly provided in this Act, the provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law, contract, instrument, memorandum or articles of a company or in any agreement executed by a company or in any resolution passed by the company in a general meeting or by its directors, whether the same is registered, executed or passed, before or after the commencement of this Act.

4. Jurisdiction and powers of High Court.— (1) The Court having jurisdiction under this Act shall be the High Court having jurisdiction over the place at which the registered office of the debtor is situated or the principal place of business of the debtor, as the case may be.

- (2) Subject to the provisions of this Act, the Court shall, -
- (a) in the exercise of its civil jurisdiction, have all the powers vested in a Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908);
 - (b) in the exercise of its criminal jurisdiction, have all the powers vested in a court exercising jurisdiction under the Code of Criminal Procedure, 1898 (Act V of 1898); and
 - (c) in the exercise of its company jurisdiction, have all the powers vested in a court-exercising jurisdiction under the Companies Ordinance, 1984 (Ordinance XLVII of 1984).

(3) Subject to the provisions of this Act, a Judge of a Court exercising jurisdiction under this Act may exercise the whole or any part of his jurisdiction in chambers.

(4) Notwithstanding anything contained in any other law, all matters coming before the Court under this Act shall be disposed off expeditiously and final judgment shall be pronounced within ninety days from the date of the expert opinion of the Technical Assistance Committee on any plan submitted in the case, and except in extraordinary circumstances and on grounds to be recorded by the Court, the Court shall hear the case on day to day basis.

5. Appeal and review.— (1) An appeal shall lie, at the instance of any person aggrieved by an order made by a Judge of the High Court in exercise of the jurisdiction conferred by this Act, in the same way and subject to the same provisions as an appeal from an order made by a Judge in exercise of the ordinary original jurisdiction of that Court.

(2) The Court may review, rescind or vary any order made by it under this Act.

6. High Court rules.— The High Court may, in consultation with the Federal Government, by notification in the Official Gazette, make rules concerning the mode of proceedings for the rehabilitation of a company and generally for all applications to be made to the Court and all other proceedings or matters coming within the purview, powers or duties of the Court under this Act.

7. Applicability of law.— (1) Subject to sub-section (2), a debtor shall be a company which commences or against which a case has commenced under this Act.

- (2) A company shall not be a debtor under this Act if it is,—
 - (a) a financial institution;

- (b) a company engaged in the business of insurance as defined in paragraph (xxvii) of section 2 of the Insurance Ordinance, 2000 (XXXIX of 2000);
- (c) a company which has debts of less than fifty million rupees or such other sum as the Federal Government may, by notification in the official Gazette, specify from time to time;
- (d) a company against which an order of dismissal under section 17 has been passed within the past five years;
- (e) a company with respect to which a plan of rehabilitation has been confirmed under this Act and a period of ten years has not elapsed, unless the Court finds that it would be in the interest of justice for such company to be allowed to be a debtor under this Act;
- (f) a company against which a winding up order has already been passed;
- (g) a company which has resolved by special resolution that such company be wound up voluntarily;
- (h) a company against which a decree has been passed and which remains unsatisfied for such threshold amount as the Federal Government may, by notification in the official Gazette, specify in consultation with the Commission and the State Bank of Pakistan; or
- (i) a company, which has availed relief under the BPD Circular No.29 of 2002 issued by the State Bank of Pakistan.

8. Limitation.— (1) Except as provided otherwise in this Act, the provisions of the Limitation Act, 1908 (IX of 1908) shall apply to the proceedings under this Act.

(2) Notwithstanding anything contained in the Limitation Act, 1908 (IX of 1908), in computing the time within which an administrator may institute a suit for the recovery of any debt due to the debtor, the period which elapses between the filing of a petition under this Act and the passing of an order for relief under this Act or a period of one year, whichever be greater, shall be excluded.

9. Technical Assistance Committee.— (1) There shall be a Technical Assistance Committee consisting of nine members or such other number as the Federal Government may, by notification in the official Gazette, specify and each member shall have expertise and minimum experience of fifteen years in the field of accountancy, banking, economics, finance, insolvency, law or management.

(2) The head office of the Technical Assistance Committee shall be at Islamabad or such other place as the Federal Government may, by notification in the official Gazette, specify.

(3) The members of the Technical Assistance Committee shall be appointed by the Federal Government in consultation with the Commission and the State Bank of Pakistan according to the fit and proper criteria prescribed by the regulations and no person above the age of sixty-two years shall be appointed or re-appointed as member of the committee.

(4) The Technical Assistance Committee shall be headed by a Chairman appointed by the Federal Government in consultation with the Commission and the State Bank of Pakistan, from amongst the members, who shall be responsible for the administration of the affairs of the committee.

(5) The Chairman and others members of the Technical Assistance Committee shall be entitled to such remuneration and other privileges as may be determined by the Federal Government in consultation with the Commission and the State Bank of Pakistan.

(6) The members of the Technical Assistance Committee shall be appointed for a term of three years and may be reappointed for one more similar term and shall not be removed except for physical or mental incapacity, insolvency or misconduct.

(7) The Federal Government shall prescribe standards relating to conflict of interest to be observed by the Technical Assistance Committee.

(8) The Court shall refer all plans to the Technical Assistance Committee for its expert opinion, *inter alia*, on the following: –

- (a) what are the liabilities owed by the debtor to its secured creditors;
- (b) whether the liabilities owed by the debtor are adequately secured;
- (c) whether there is a possibility of rehabilitation of the debtor through restructuring or rescheduling of its liabilities, or through reorganization of the debtor, as the case may be;
- (d) whether for the purposes of section 35 the adequate protection is being offered to the holder of a charge is in fact adequate;
- (e) whether a proposed plan is fair and equitable for the purposes of section 53;

- (f) what modifications are required to make a proposed plan fair and equitable for the purposes of section 53;
- (g) whether any particular claim or class of claims can be justified on the basis of generally accepted accounting principles;
- (h) any additional matter which in the opinion of the committee is pertinent to the rehabilitation or restructuring of the debtor; and
- (i) any other question that may be deemed fit by the Court.

(9) The Chairman of the Technical Assistance Committee shall constitute three-member sub-committees to examine the plans and questions referred by the Court to the committee for its expert opinion.

(10) A sub-committee of the Technical Assistance Committee shall submit its expert opinion to the Court, –

- (a) after giving an opportunity of hearing in person to all concerned parties or their representatives; and
- (b) within sixty days of the referral of a plan or a question to it by the Court:

Provided that the Court may extend the time for submission of the expert opinion, for good cause shown, for an additional period of thirty days on an application made by the sub-committee.

(11) Any party aggrieved by the expert opinion of the sub-committee of the Technical Assistance Committee may file objections before the Court against the expert opinion within fifteen days of the filing thereof.

(12) The Technical Assistance Committee shall establish a fund for financing and funding its affairs.

(13) The fund established under sub-section (12) may be financed from the following sources, namely:—

- (a) grants or other assistance from domestic and international donor agencies;
- (b) fees charged from the parties at the time of filing of a plan in Court;
- (c) grants from the Federal Government, including any seed money; and
- (d) income and earnings on account of operations and investments of the Technical Assistance Committee.

(14) The fund established under sub-section (12) shall be operated in such manner as may be prescribed by rules and shall be expended for the purpose of paying any expenditure lawfully incurred by the Technical Assistance Committee, including all remuneration, pays and allowances, fees and costs, purchasing or hiring equipment, acquiring or leasing property, repaying any financial accommodation or money borrowed along with profit and return thereupon and generally all costs and expenses in relation to the performance of its functions or the exercise of its powers under this Act.

(15) The accounts of the Technical Assistance Committee shall be,—

- (a) maintained in such form and manner as may be prescribed by rules; and
- (b) audited by a chartered accountant within meaning of the Chartered Accountants Ordinance, 1961 (X of 1961).

(16) The Technical Assistance Committee shall, after the end of every financial year, submit to the Federal Government the audited annual statement of accounts of the Technical Assistance Committee.

Chapter 2 – Case Administration

10. Commencement of a case.—(1) A case under this Act may be commenced either as a voluntary case or an involuntary case.

(2) The Federal Government may, by notification in the official Gazette, prescribe charges and fees for the filing of a petition under this Act, which may be revised subject to the condition of previous publication in the official gazette.

11. Voluntary cases.— (1) A voluntary case is commenced when a debtor files a petition before the Court seeking an order of relief against itself.

(2) A company shall not file a petition seeking an order of relief unless the decision to file such a petition has been approved in advance by a special resolution of such company declaring the company insolvent according to the provisions of this Act.

(3) Subject to section 17 and the requirements contained in sub-section (2), the filing of a petition for an order of relief in a voluntary case shall be deemed by the Court to be conclusive proof that the debtor is insolvent and thereby entitled to relief in accordance with the provisions of this Act.

12. Involuntary cases.— (1) An involuntary case may only be commenced against a debtor by an interested party by filing a petition for an order of relief before the Court so long as,—

- (a) the interested party is the holder of an unpaid claim against the debtor that is not,—
 - (i) contingent as to liability; or
 - (ii) subject of a bona fide dispute; and
- (b) the unpaid claim or claims of the interested party aggregate such sum as the Federal Government may, by notification in the official Gazette, specify.

(2) On the first date of hearing of an involuntary case, the Court shall issue notice to the debtor through,-

- (a) registered post, acknowledgement due;
- (b) courier service; and
- (c) publication in one English language and one Urdu language daily newspaper of wide circulation in the country; and service duly effected in any one of the aforesaid modes shall be deemed to be valid service for the purposes of this Act.

(3) The notice to be issued to the company against which the petition has been filed shall specify a date, not later than two weeks after the completion of service in accordance with sub-section (2) on the said company, on which date that company shall be heard if it wants to defend the petition.

(4) Any written reply filed by the company against which the petition has been filed shall only be considered by the Court if such reply has been,—

- (a) filed with the Court at least two days prior to the date of hearing; and
- (b) copies of the reply have been supplied simultaneously therewith to all entities, which filed the petition against that company.

(5) Except to the extent that the Court orders otherwise and until an order of relief has been passed in the case, a company against which a petition for an order of relief has been filed may continue to operate and may continue to use, acquire or dispose of property as if an involuntary case concerning it had not been commenced.

13. Order of relief.— (1) In a voluntary case, the Court shall pass an order of relief on the first date of hearing.

(2) In an involuntary case, the Court may pass an order of relief only after notice and a hearing.

14. Notice of an order of relief.— (1) In a voluntary case, the notice of an order of relief shall be provided by the debtor in possession, if one has been appointed, to all interested parties within three days of the order of relief, through,—

- (a) registered post, acknowledgement due;
- (b) courier service; and
- (c) publication in one English language and one Urdu language daily newspaper of wide circulation in the country;

and service duly effected in any one of the aforesaid modes shall be deemed to be valid service for the purposes of this Act.

(2) In an involuntary case, the person filing the petition shall provide the notice of the order of relief in accordance with sub-section (1).

(3) The notice of an order of relief shall specify the requirement to file claims and interests under section 40.

(4) If the debtor's business is such that persons in remote or rural areas are likely to be affected, the Court shall also order that notice of an order of relief be provided through such other methods as it deems necessary to provide effective notice to all interested parties.

(5) If the debtor in possession or the administrator, if one has been appointed, or the person filing the petition does not comply with the provisions of this section, the Court may impose a fine not exceeding five hundred thousand rupees.

15. Automatic stay.— (1) The order of relief shall operate as a stay against,-

- (a) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this Act or to recover a claim against the debtor that arose before the commencement of the case under this Act;

- (b) the enforcement or execution of a judgment obtained before the commencement of the case under this Act against the debtor or against property of the estate;
 - (c) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
 - (d) any act to create, perfect or enforce any charge against property of the estate;
 - (e) any act to create, perfect or enforce any charge against property of the debtor to the extent that such charge secures a claim that arose before the commencement of the case under this Act;
 - (f) any act to collect, assess or recover a claim against the debtor that arose before the commencement of the case under this Act;
 - (g) the set off of any debt owing to the debtor that arose before the commencement of the case under this Act against any claim against the debtor;
 - (h) except as provided by this Act, the commencement or continuation of any proceeding seeking the winding up of the debtor under the Ordinance;
 - (i) revocation, suspension, cancellation or refusal to renew, a license, permit, charter, franchise or other similar grant in favour of a debtor intended to be made on or after the commencement of the case by the debtor; and
 - (j) alteration, refusal or discontinuance of a utility service to the debtor except if the debtor fails to make payment for the utility service provided after the commencement of a case under this Act.
- (2) For the purposes of this section,—
- (a) any action against any person who has guaranteed any liability of the debtor shall be deemed to be an action against the debtor to the extent that such action relates to a claim against the debtor; and
 - (b) any action against any person arising out of any liability originally incurred by the debtor shall be deemed to be an action against the debtor.

(3) The automatic stay of any act or action under sub-section (1) shall cease to have effect on,—

- (a) the confirmation of a plan;
- (b) the dismissal of the case;
- (c) the expiry of a period of one hundred and eighty days of the submission of expert opinion of the Technical Assistance Committee; or
- (d) the conversion of the case into winding up proceedings under this Act.

16. Relief from automatic stay.— (1) On the request of an interested party and after notice and a hearing, the Court shall grant relief from the stay provided under sub-section (1) of section 15, such as by vacating, discharging or modifying such stay, —

- (a) for cause, including the lack of adequate protection of an interest in property of such interested party;
- (b) with respect to an unexpired lease, if the administrator has failed to duly perform his obligations under sub-section (2) of section 38; or
- (c) with respect to a stay of an act against property under sub-section (1) of section 15, if —
 - (i) the debtor does not have any equity in such property; and
 - (ii) such property is not necessary to an effective re-organization;

(2) Upon request of an interested party, the Court, with or without a hearing, shall grant such relief from the stay provided under sub-section (1) of section 15 as is necessary to prevent irreparable harm or loss to the interest of an entity in property, if such interest will suffer such harm before there is an opportunity for notice and a hearing.

(3) In any hearing concerning relief from the stay of any act under sub-section (1) of section 15,—

- (a) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and
- (b) the party opposing such relief has the burden of proof on all other issues.

17. Dismissal of a case.— (1) Notwithstanding anything to the contrary in this Act, the Court may, on the application of any person concerned with the debtor or on its own accord, dismiss a case or may suspend all proceedings in a case under this Act at any time, if the Court determines that allowing proceedings to continue would amount to an abuse of the judicial process.

(2) If the Court dismisses a case under sub-section (1), the entity filing that case shall be liable to pay the costs of the case incurred by all other interested parties and shall also be liable to pay a fine, which may extend to ten million rupees.

18. Effect of dismissal.— (1) Unless the Court for any reason orders otherwise, the dismissal of a case under section 17 does not bar the discharge, in a later case under this Act of debts that were dischargeable in the case dismissed nor does the dismissal of a case under this Act prejudice the debtor with regard to the filing of a subsequent petition subject to the provisions of this Act.

(2) Unless the Court for any reason orders otherwise and except as otherwise provided, the dismissal of a case does not affect the validity of any action taken during the pendency of a case.

- (3) Unless the Court for cause orders otherwise, the dismissal of a case,—
- (a) reinstates,—
 - (i) any proceeding or custodianship superseded under this Act;
 - (ii) any transfer avoided under this Act; and
 - (iii) any charge voided under this Act;
 - (b) vacates any order or transfer ordered under this Act; and
 - (c) reverts the property of the estate in such person in which such property was vested immediately before the commencement of the case under this Act.

19. Conversion of a case.— (1) A case under this Act shall be converted by the Court into winding up proceedings if, —

- (a) an application to such effect is made by a debtor in possession and such decision to convert has been approved in advance by a special resolution of that company;
- (b) the Court finds that a petition under this Act by the debtor was filed fraudulently;

- (c) no plan is filed within the period under section 48;
- (d) no plan is confirmed by the Court; or
- (e) an order of revocation is passed under section 56.

(2) If after notice and a hearing, the Court determines that a petition has been fraudulently filed under this Act, the entity filing such petition, shall be liable for,—

- (a) the costs and fees reasonably incurred by all other parties with regard to such fraudulently filed petitions; and
- (b) a fine of not less than five hundred thousand rupees or such other higher amount, as the Court may determine.

(3) The Court may convert a case under this Act into winding up proceedings for any reason, including,—

- (a) continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation;
- (b) unreasonable delay by the debtor that is prejudicial to creditors;
- (c) failure to propose a plan under this Act within any time fixed by the Court;
- (d) denial of confirmation of every proposed plan and denial of a request made for additional time for filing another plan or a modification of a plan; or
- (e) revocation of an order of confirmation under section 56.

(4) The order of conversion under this section shall also provide for the appointment of a liquidator and the Court shall for such purpose exercise necessary jurisdiction under the Ordinance.

(5) An administrator appointed in a case shall not be appointed as a liquidator in that case.

(6) An application for conversion under this section shall not be filed by any party except,—

- (a) the debtor;
- (b) a creditor having a claim of at least ten percent of the paid up capital of the debtor; and
- (c) the administrator appointed in the case.

20. Consequences of conversion.— (1) Notwithstanding any provision of the Companies Ordinance, 1984 (Ordinance XLVII of 1984), an order of conversion under section 19 shall be deemed to be a winding up order by the Court under section 305 of the Ordinance and the winding up of the debtor shall be deemed to have commenced on the date of commencement of the case under this Act.

(2) Except as provided in sub-section (3), all proceedings subsequent to an order of conversion under section 19 shall be carried out in accordance with the provisions of the Ordinance, including the filing of appeal against such order and other remedies provided therein.

(3) Following an order of conversion, a financial institution may initiate or continue with proceedings under the Financial Institutions (Recovery of Finances) Ordinance, 2001 (XLVI of 2001) without seeking permission from the Court under section 316 of the Ordinance.

(4) An admission of liability by the debtor for the purposes of its plan or during the course of proceedings under this Act or determination of liability under the provisions of this Act shall, at the option of the creditors, be deemed to constitute an admission of liability of the debtor for the purposes of a recovery suit, where such a suit is proceeded with after an order of conversion.

(5) All administrative expenses incurred or accrued during proceedings under this Act shall, following the conversion of proceedings under this Act into winding up proceedings under the Companies Ordinance, 1984 (Ordinance XLVII of 1984) by the Court, be paid in priority to all other debts including those provided in section 405 of the Ordinance.

21. Power to require delivery of property.— Without prejudice to any obligation imposed under any other provision, the Court may at any time after passing an order of relief under this Act require any trustee, receiver, banker, agent, officer or employee or former officer or employee or auditor of the debtor to pay, deliver, convey, surrender or transfer forthwith or within such time as the Court directs, to the administrator, if one has been appointed, any money, property or books and papers including documents in his hands to which the debtor is *prima facie* entitled, which is not subject to any charge.

22. Powers and duties of a debtor in possession.— (1) If no administrator has been appointed, except to the extent property of the estate is in the control of a receiver, the debtor in possession shall,—

- (a) continue in possession and control of the property of the estate and may use, sell or lease property of the estate in the same manner as before;

(b) exercise all the rights and powers of an administrator including in relation to the operation of the debtor's business other than the right provided under section 44; and

(c) perform all the functions and duties of the administrator.

(2) The Court may, upon the application of any interested party, restrict and duties of a debtor in possession on such terms as it may deem appropriate.

(3) A debtor in possession shall not be entitled to any compensation under section 31.

23. Duties of debtors.— (1) If an administrator is appointed, the debtor shall,—

(a) cooperate with the administrator to enable him to perform his duties under this Act;

(b) surrender to the administrator all property of the estate and any recorded information including books, documents, records and papers relating to property of the estate; and

(c) appear at any hearings at which its presence is required by either the administrator or a committee appointed under section 33.

(2) The duty of the debtor under sub-section (1) with respect to co-operation with the administrator extends to all directors and employees of the debtor.

24. Appointment of administrator.— (1) In a voluntary case, the Court may after notice and hearing appoint an administrator at any time after an order of relief but before confirmation of a plan on request of an interested party, –

(a) for any reason including fraud, dishonesty, incompetence or gross mismanagement of the affairs of the debtor by current management either before or after the commencement of the case or similar cause; or

(b) if such appointment is in the interest of creditors, any shareholders and other interests of the estate.

(2) In an involuntary case, the Court shall, at the request of the petitioner, appoint an administrator at the time of passing of the order of relief.

(3) No person shall be appointed by the Court as an administrator under this Act unless he has expertise in banking, law, accountancy or management and has been duly registered as an administrator in accordance with the conditions specified by the Board.

(4) The appointment of an administrator is automatically terminated by the confirmation of a plan of rehabilitation under section 52 or section 53 as well as by the conversion of a case under this Act into winding up proceedings.

(5) If an administrator dies or resigns during the pendency of a case or is removed, then a substitute administrator shall be appointed immediately.

(6) Notice of the appointment of an administrator in every case shall be given by the appointed administrator to the Commission within two working days of his appointment.

25. Effect of appointment of administrator.— On the appointment of an administrator,—

- (a) all the powers of the directors, chief executive and other officers of the debtor shall cease, except as may be required under this Act and except so far as the Court may sanction the continuance thereof; and
- (b) all the powers of a receiver appointed prior to the commencement of a case shall cease in relation to the property of the estate.

26. Removal and termination of administrator.— (1) The Court may at any time before confirmation of a plan, on request of an interested party and after notice and a hearing terminate the administrator's appointment and restore the debtor to possession and management of the property of the estate and of the operation of the debtor's business.

(2) The Court, after notice and a hearing, may remove an administrator for any reason and appoint another administrator.

(3) Whenever the Court removes an administrator under sub-section (2), such administrator shall also thereby stand automatically removed in all other cases under this Act in which such administrator is then serving unless the Court orders otherwise.

(4) A vacancy in the office of the administrator during a case does not abate any pending action or proceeding and the successor administrator shall be substituted as a party in such action or proceeding.

27. Power and duties of an administrator.— (1) An administrator shall,—

- (a) operate the debtor's business;
- (b) if the debtor has not done so, file the list, schedule and statement required under section 39;
- (c) except to the extent that the Court orders otherwise, investigate the acts, conduct, assets, liabilities and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business and any other matter relevant to the plan;
- (d) as soon as practicable,—
 - (i) file a statement of any investigation conducted under paragraph (d) including any fact ascertained pertaining to fraud, dishonesty, incompetence, misconduct, mismanagement or irregularity in the management of the affairs of the debtor or to a cause of action available to the estate; and
 - (ii) transmit a copy or a summary of any such statement to any creditor's committee or shareholder's committee, mortgagee, receiver or charge holder and to such other entity as the Court designates;
- (e) adopt the plan filed under this Act or seek modification of the plan or recommend the winding up of the debtor under the Ordinance;
- (f) institute or defend any suit, action, prosecution or other legal proceeding, civil or criminal, in the name and on behalf of the debtor, to the extent necessary;
- (g) subject to Court approval, make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the debtor or whereby the debtor may be rendered liable;
- (h) be accountable for all property received in the manner specified;
- (i) examine proofs of claim and object to the allowance of any claim that is improper;

- (j) unless the Court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by an interested party;
- (k) make a final report and file a final account of the administration of the estate with the Court;
- (l) have the power to,—
 - (i) do anything that is incidental to exercising a power set out in this section; and
 - (ii) do anything else that is necessary or convenient for the purpose of administering the affairs of the debtor; and
- (m) not be liable for any loss or damages caused by any act or omission undertaken in good faith.

28. Administrator's account.— (1) Every administrator shall, at such times, as may be prescribed by regulations during his tenure in office, present to the Court a comprehensive account of his receipts and payments and dealings as administrator together with such further information as may be prescribed through Regulations.

(2) The Court shall cause the account and the books and papers of the administrator to be audited in such manner as it think fit.

(3) The administrator shall cause a copy of the account when audited to be sent by post to the Commission as well as to every creditor.

29. Power to order payment into bank.— The Court may order any person from whom any money is due to the debtor to pay the same into the account of the administrator in a scheduled bank instead of to the administrator and any such order may be enforced in the same manner as if it had directed payment to the administrator.

30. Summary disposal of certain suits.— Notwithstanding anything contained in the Code of Civil Procedure, 1908 (Act V of 1908), an administrator desiring to recover any debt due to the debtor may apply to the Court in which the proceedings are pending that the same be determined summarily and the Court may determine it on affidavits but when the Court deems it just and expedient, either on an application made to it in this behalf or of its own motion, it may set down any issue or issues for hearing on other evidence also and pass such orders for discovery of particulars as it may do in a suit.

31. Compensation of administrators.— After notice to the interested parties and a hearing, the Court may award to an administrator such fees and expenses as may be prescribed by regulations.

32. Employment of professional persons.— (1) The administrator may employ one or more advocates, accountants, appraisers, auctioneers or other professional persons to represent or assist the administrator in carrying out the administrator's duties under this Act on reasonable terms and conditions of employment with the prior approval of the Court.

(2) In cases of emergency the administrator may appoint a person and submit the details of terms and conditions of such appointment along with due reasons thereof in the Court for approval.

(3) The Court may approve, modify or reject appointment under sub-section (2), if it is of the opinion that the terms and conditions of appointment exceed the reasonable value of the services.

33. Creditors' and shareholders' committees.— (1) The debtor in possession or the administrator, if one has been appointed, shall appoint a committee of creditors and may appoint an additional committee of shareholders if the debtor or administrator deems appropriate.

(2) The committees shall have adequate representation of the different classes of creditors or shareholders of the debtor, as the case may be.

(3) The expenses of a committee appointed under this section shall be borne by the class represented by that committee.

(4) On request of an interested party, the Court may order the debtor in possession or the administrator, if one has been appointed, to appoint such additional members of a committee as the Court feels necessary to assure adequate representation of creditors or shareholders.

34. Powers and duties of committees.— (1) A committee appointed under section 33 may,—

- (a) consult the debtor in possession or the administrator, if one has been appointed, concerning the administration of the case;
- (b) review the acts, conduct, assets, liabilities and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business and any other matter relevant to the plan;
- (c) participate in the finalization of the plan and file with the Court acceptance or rejection of the plan; and

(d) request the Court for the appointment of an administrator.

(2) As soon as practicable after the appointment of a committee under this Act, the debtor in possession or the administrator, if one has been appointed, shall meet with such committee to transact such business as may be necessary and proper.

(3) The powers of a committee appointed under section 33 shall terminate upon the confirmation of a plan or upon the conversion of a case into winding-up under the Companies Ordinance, 1984 (Ordinance XLVII of 1984).

35. Adequate protection.— When adequate protection is required under any section of this Act of an interest of an entity in property, the Court may order such adequate protection to be provided by, –

(a) requiring the administrator to make a cash payment or periodic cash payments to such entity, to the extent that,—

(i) the automatic stay under section 15;

(ii) the use, sale or lease under section 36; or

(iii) any grant of a charge under section 37,

results in a decrease in the value of such entity's interest in such property;

(b) requiring the administrator to provide such entity an additional or replacement charge to the extent that such stay, use, sale, lease or grant results in a decrease in the value of such entity's interest in such property; or

(c) granting such other relief other than entitling such entity to compensation allowable under section 41 as an administrative expense, as will result in the realization by such entity of the equivalent of such entity's interest in such property.

36. Use, sale or lease of property.— (1) Unless the Court orders otherwise, the administrator may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing and may use property of the estate in the ordinary course of business without notice and a hearing.

(2) The administrator may use, sell or lease property of the estate in a manner other than in the ordinary course of business only after notice and a hearing.

(3) The administrator may use, sell or lease property under sub-section (1) or sub-section (2) only to the extent not inconsistent with any relief granted under section 15.

(4) Under sub-sections (1) and (2), the administrator may sell property of the estate free and clear of any interest in such property of an entity other than the estate, only if,—

- (a) applicable law other than this Act permits the sale of such property free and clear of such interest;
- (b) such entity consents;
- (c) such interest is a charge and the price at which such property is to be sold is greater than the aggregate value of all charges on such property;
- (d) such interest is not in bona fide dispute; or
- (e) any charge that a secured creditor had with respect to the sold property is transferred to the proceeds of the sale, up to the extent of the value of such creditors allowed claim.

(5) At a sale under sub-section (1) of property that is subject to a charge that secures an allowed claim, unless the Court for cause orders otherwise, the holder of such claim may bid at such sale and if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.

(6) Notwithstanding any insolvency clause to the contrary but subject to the provisions of this Act, the administrator may use, sell or lease property under sub-section (1) or sub-section (2) or a plan under this Act may provide for the use, sale or lease of property.

(7) The reversal or modification on appeal of an authorization under sub-section (1) or sub-section (2) of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

(8) In any hearing under this section, the burden of proof —

- (a) on the issue of adequate protection shall be on the administrator; and

- (b) shall be on the entity asserting an interest in property on the issue of the validity, priority or extent of such interest.

37. Obtaining credit.— (1) Unless the Court orders otherwise, the administrator may to the extent allowed by applicable law obtain unsecured credit and incur unsecured debt in the ordinary course of business allowable as an administrative expense.

(2) The Court, after notice and a hearing, may authorize the administrator on such terms and conditions as it deems appropriate to obtain unsecured credit to the extent allowed by applicable law other than in the ordinary course of business and allow such credit as an administrative expense.

(3) If the administrator is unable to obtain unsecured credit under sub-sections (1) and (2), the Court may, on such terms and conditions as it deems appropriate, after notice and a hearing, authorize the obtaining of credit or the incurring of debt,—

- (a) with priority over all administrative expenses;
- (b) secured by a charge on property of the estate that is not otherwise subject to a charge; or
- (c) secured by a subordinate charge on property of the estate that is subject to a charge.

(4) The Court may, after notice and a hearing, authorize on such terms and conditions as it deems appropriate, the obtaining of credit or the incurring of debt secured by a superior or equal charge on property of the estate that is subject to a charge, only if,—

- (a) the administrator is unable to obtain credit otherwise; and
- (b) there is adequate protection of the interest of the holder of the charge on the property of the estate on which such superior or equal charge is proposed to be granted.

(5) In any hearing under sub-section (4), the burden of proof shall be on the administrator with respect to the issue of whether any protection being given to the holder of the charge on the property of the estate on which a superior or equal charge is proposed to be granted is actually adequate protection as provided by section 35.

(6) The reversal or modification on appeal of an authorization under this section to obtain credit or incur debt or of a grant under this section of a priority or a charge does not affect the validity of any debt so incurred or any priority or charge so granted to an entity that extend such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

38. Assumption and rejection of executory contracts and unexpired leases.— (1) Subject to the restrictions contained in this Act, the administrator, with the approval of the Court, may assume or reject any executory contract or unexpired lease of the debtor including,—

- (a) any executory contract relating to the employment or services of any person; and
- (b) any unexpired lease of immovable property.

(2) The administrator shall timely perform all the obligations of the debtor arising from and after the order for relief under any unexpired lease until such lease is assumed or rejected.

(3) The administrator may not reject any executory contract or unexpired lease without giving notice of his intent to reject to all parties to such executory contracts or unexpired leases.

(4) Any party which is prejudiced by the debtor's rejection of an executory contract or unexpired lease may file a claim for damages provided that such a claim shall be deemed to be a breach of such contract or lease occurring immediately prior to the date of the filing of the petition.

(5) Where the debtor assumes any executory contract or unexpired lease, any damages arising out of any default by the debtor prior to the order of relief shall be payable as a debt occurring immediately prior to the date of the filing of the petition.

(6) After the commencement of the case, an executory contract or unexpired lease of the debtor may not be terminated or modified at any time by the parties other than the debtor solely because of an insolvency clause.

Chapter 3 – Creditors, Debtor and the Estate

39. Statement of affairs.— (1) In every case there shall be made out and submitted to the Court and the Technical Assistance Committee a statement as to the affairs of the debtor in the form prescribed by regulations, verified by an affidavit and containing the following particulars, namely,—

- (a) the assets of the debtor stating separately the cash balance in hand and at the bank, if any, and the negotiable securities, if any, held by the company;
- (b) the debts and liabilities (both direct and contingent) of the debtor;
- (c) the names, residences and occupations of the creditors of the debtor, stating separately the amount of secured debts and unsecured debts and in the case of secured debts, particulars of the securities given, their value and the dates when they were given;
- (d) the debts due to the debtor and the names, residences and occupations of the persons from whom they are due and the amount likely to be realized therefrom;
- (e) where any property of the debtor is not in its custody or possession, the place where and the person in whose custody or possession such property is;
- (f) full address of the places where the business of the debtor was conducted during six months preceding the relevant date and the names and particulars of the persons in charge of the same;
- (g) details of any pending suits or proceedings in which the debtor is a party;
- (h) latest publically disclosed accounts and the last audited accounts; and
- (i) such other particulars as may be prescribed by regulations or as the Court may require in writing.

(2) In a voluntary case, the statement of affairs shall be submitted by the debtor along with the petition.

- (3) In an involuntary case, the statement of affairs shall be submitted by,-
 - (a) the debtor in possession within fourteen days of service of the notice under sub-section (2) of section 12; or

- (b) the administrator within fourteen days of his appointment.
- (4) If the statement of affairs is not timely filed, the Court shall —
 - (a) appoint an administrator if the responsibility to file the statement of affairs was of the debtor in possession; or
 - (b) remove the administrator and appoint a substitute administrator, if the responsibility to file the statement of affairs was of the administrator.

(5) An administrator removed by the Court under this section shall not be compensated for any work done by him.

(6) material particulars or falsely denies his signature on any document before the Court, shall be guilty of an offence punishable with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

(7) Where the person accused of an offence under this Act is a company, the chief executive by whatever name called, as well as any director or officer involved, shall be deemed to be guilty of the offence and shall be liable to be prosecuted and punished accordingly.

40. Claims and interests.— (1) Within fourteen days of the publication of the notice of order of relief under section 14, a proof of claim or interest shall be filed with the Court and the Technical Assistance Committee by the creditors, shareholders or interested parties, as the case may be.

(2) Any person who does not timely file a claim will be deemed to have no claim against the estate unless the delay in filing the claim is condoned, after notice and hearing, by the Court for sufficient cause shown.

(3) A claim or interest, proof of which is timely filed, is deemed allowed unless an interested party objects within fourteen days of the last day provided for filing of claims.

(4) If any objection to a claim is made, the administrator shall determine the amount of such claim.

(5) Any party aggrieved by a determination of the administrator may prefer an appeal to the Court, which shall determine the amount of the claim or interest.

41. Allowance of claims for administrative expenses.— (1) After notice and a hearing, there shall be allowed administrative expenses, from time to time, including,—

- (a) the actual, necessary costs and expenses of preserving the estate, including, —
 - (i) any credit facility obtained by the debtor under section 37;
 - (ii) wages, salaries or commissions for services rendered after the commencement of the case;
 - (iii) payment for agricultural produce supplied to the debtor as raw material for the debtor's business; and
 - (iv) payment for goods supplied to the debtor in the ordinary course of the debtor's business but no claim may be allowed as an administrative expense if such claim relates to goods or agricultural produce supplied to the debtor more than six months prior to the commencement of the case; and
- (b) compensation and reimbursement awarded under section 31.

42. Priorities.— (1) Administrative expenses allowed under section 41 shall have priority over all other expenses and claims.

(2) If the administrator, under any provision of this Act, provides adequate protection of the interest of a creditor secured by a charge on property of the debtor and if, notwithstanding such protection, such creditor has a claim arising from the stay of action against such property under section 15, from the use, sale or lease of such property under section 36 or from the granting of a charge under section 37, then such creditors claim under such sections shall have priority over every other claim allowable under sub-section (1).

43. Property of the estate.— (1) The estate shall include the following,—

- (a) all legal, equitable rights or interests of the debtor in any property up to the commencement of the case;
- (b) any interest in property that the administrator recovers for the benefit of the estate under this Act;
- (c) any interest in property ordered to be transferred to the estate under this Act;

- (d) proceeds, product, produce, offspring, rents or profits of or from property of the estate; and
- (e) any interest in property that the estate acquires after the commencement of the case.

(2) An interest of the debtor in property becomes property of the estate under this Act, notwithstanding any insolvency clause to the contrary or any provision in an agreement, transfer instrument or law that restricts or conditions transfer of such interest by the debtor.

44. Turnover of property to the estate to the Administrator.— (1) A custodian or an entity in possession, custody or control of a property that the administrator may use, sell or lease under this Act shall deliver such property to the administrator or account for the value of such property.

(2) An entity that owes a debt that is property of the estate and that is matured, payable on demand or payable on order shall pay such debt to or on the order of the administrator, except to the extent that such debt may be offset under this Act against a claim against the debtor as provided by section 46.

(3) After notice and hearing, the Court may excuse compliance with any provision of this section if the interests of creditors would be better served by permitting a custodian to continue in possession, custody or control of such property.

45. Avoidance of transfers.— (1) Except as provided under sub-section (2), an administrator may avoid a transfer of an interest of the debtor in property in favour of a creditor where such transfer —

- (a) is made on account of an antecedent debt owed by the debtor before such transfer;
- (b) is made within,—
 - (i) six months before the date of the filing of the petition under this Act; or
 - (ii) if the creditor is an insider, within one year before the date of the filing of the petition under this Act; and
- (c) enables such creditor to receive more than what such creditor would have received otherwise.

- (2) The administrator shall not avoid a transfer where such transfer is —
 - (a) intended by the debtor and the creditor to be a contemporaneous exchange for new value given to the debtor and is a substantially contemporaneous exchange;
 - (b) made in payment of a debt incurred by the debtor in the ordinary course of business and according to ordinary business terms; or
 - (c) for the benefit of a creditor to the extent that such creditor gives new value to or for the benefit of the debtor subsequent to the transfer.

(3) To the extent that a transfer is avoided under this section the Court may allow the administrator to recover for the benefit of the estate the property transferred or the value of such property from the initial transferee or subsequent transferee.

(4) For the purposes of this section the expression, “new value” means money worth in goods, services or new credit or released by a transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the debtor or the administrator under any applicable law, including proceeds of such property, but does not include an obligation substituted for an existing obligation.

46. Set off.— Except as otherwise provided in this section and in sections 37 and 39, nothing in this Act shall affect any right of a creditor to offset a debt owed by such creditor to the debtor which arose before the commencement of the case under this Act against a claim of such creditor against the debtor that also arose before the commencement of the case except to the extent that, —

- (a) the claim of such creditor against the debtor is disallowed;
- (b) such claim was transferred, by an entity other than the debtor, to such creditor, —
 - (i) after the commencement of the case; or 30
 - (ii) within six months before the commencement of the case, and
- (c) the debt owed to the debtor by such creditor was incurred by such creditor,
 - (i) within six months of the date of the filing of the petition; and
 - (ii) for the purpose of obtaining a right of set off against the debtor.

47. Abandonment of property of the estate.— (1) After notice and a hearing, the administrator may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

(2) On request of an interested party and after notice and a hearing, the Court may order the administrator to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

Chapter 4 – Submission and Confirmation of a Plan

48. Who may file plan and timing.— (1) In a voluntary case, the debtor shall file a plan with the petition and may amend such plan within thirty days of the order of relief.

(2) In an involuntary case, the party filing the petition shall submit a plan with the petition and may amend such plan within thirty days of the order of relief.

(3) Any interested party including the debtor, administrator, creditors committee, shareholder's committee, a creditor, a shareholder, any mortgagee or receiver may submit proposals for modification of the plan within thirty days of the order of relief.

(4) The period of thirty days for modification of the plan may be extended by the Court, for good cause shown, for an additional period of thirty days on an application made by the debtor or an interested party.

(5) No plan shall be valid for the purposes of this Act unless filed within a period of thirty days from the order of relief or extension thereof under sub-section (4).

(6) All plans filed in the Court shall be accompanied by evidence of payment of fee prescribed by regulations and such fee shall be paid in the account of the Technical Assistance Committee.

49. Contents of plan.— (1) Notwithstanding any provision of any law, a plan shall,—

(a) designate,—

(i) classes of claims other than claims entitled to priority under section 42; and

(ii) classes of interests;

- (b) specify any class of claims or interests that is not impaired under the plan;
 - (c) specify the treatment of any class of claims or interests that is impaired under the plan;
 - (d) provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest;
 - (e) provide adequate means for the plan's implementation; and
 - (f) specify the consequences of default under the plan.
- (2) Subject to sub-section (1) a plan may —
- (a) impair or leave unimpaired any class of claims, secured, unsecured or of interest;
 - (b) provide for the assumption, rejection or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section;
 - (c) provide for, —
 - (i) the settlement or adjustment of any claim or interest belonging to the debtor or to the estate; or
 - (ii) the retention and enforcement by the debtor, administrator or a representative of the estate appointed for such purpose, of any such claim or interest;
 - (d) provide for the sale of all or substantially all of the property of the estate and the distribution of the proceeds of such sale among holders of claims or interests;
 - (e) modify the rights of holders of secured claims or leave unaffected the rights of holders of any class of claims; and
 - (f) include any other appropriate provisions not inconsistent with the provisions of this Act.

50. Impairment of claims or interest.— (1) Except as provided in paragraph (d) of sub-section (1) of section 49, a class of claims or interests is impaired under a plan unless with respect to each claim or interest of such class the plan, —

- (a) leaves unaltered the legal, equitable and contractual rights to which such claim or interest entitles the holder of such claim or interest; or

- (b) notwithstanding any contractual provision or law that entitles the holder of such claim or interest to demand or receive accelerated payment of such claim or interest after the occurrence,—
 - (i) cures any such default that occurred before or after the commencement of the case under this Act, other than a default arising out of an insolvency clause;
 - (ii) reinstates the maturity of such claim or interest as such maturity existed before such default; and
 - (iii) does not otherwise alter the legal, equitable or contractual rights to which such claim or interest entitles the holder of such claim or interest.

51. Acceptance of plan.— (1) The acceptance or rejection of a plan shall not be solicited from a holder of a claim or interest unless such holder is first provided with a copy of the plan.

(2) A class of claims shall be deemed to have accepted a plan if such plan is accepted by creditors holding at least two-thirds in value of the allowed claims of such class.

(3) A class of interests shall be deemed to have accepted a plan if such plan is accepted by holders of such interests holding at least two-thirds in value of the allowed interests of such class.

(4) A class that is not impaired under a plan and each holder of a claim or interest of such class are conclusively presumed to have accepted the plan and solicitation of acceptances with respect to such class from the holders of claims or interests of such class is not required.

(5) Any holder of a claim or interest that has accepted or rejected a plan is deemed to have accepted or rejected, as the case may be, such plan as modified, unless, within the time fixed by the Court such holder changes such holder's previous acceptance or rejection.

52. Confirmation of a plan.— (1) After notice the Court shall hold a hearing regarding the confirmation of a plan.

(2) The Court shall confirm a plan if the plan is in accordance with the provisions of this Act and,—

- (a) with respect to each class of claims or interests, —
 - (i) such class has accepted the plan; or

- (ii) such class is not impaired under the plan;
- (b) except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that with respect to claims for administrative expenses specified in section 41, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;
- (c) all fees payable under any law as determined by the Court at the hearing on confirmation of the plan have been paid or the plan provides for the payment of all such fees on the effective date of the plan.

(3) The Court may confirm only one plan and if the requirements of this Act are met with respect to more than one plan, the Court shall consider the preferences of creditors and shareholders in determining which plan to confirm.

(4) Notwithstanding any provision of this Act, on the request of a Government agency which is an interested party the Court may refuse to confirm a plan if the principal purpose of the plan is the avoidance of taxes.

53. Forcible confirmation.— (1) If all the requirements of section 52, other than sub-section (2) thereof are met with respect to a plan the Court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if,—

- (a) the plan does not discriminate unfairly;
- (b) the plan is accepted by at least one class of creditors; and
- (c) is fair and equitable with respect to each class of claims or interests.

(2) For the purpose of this section the expression “fair and equitable” includes the following requirements,—

- (a) With respect to a class of secured creditors, the plan provides that —
 - (i) the holders of such claims retain the charges securing such claims, whether the property subject to such charges is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims;
 - (ii) each holder of a claim of such class receives on account of such claim deferred cash payments totaling at least the allowed amount of such claim; and

- (iii) the net present value of such deferred cash payments (calculated on the basis of such rate as may be notified from time to time by the State Bank of Pakistan) is, on the effective date of the plan equal to is at least the value of such holder's interest in the estate's interest in such property;
 - (iv) for the sale, subject to sub-section (5) of section 36, of any property that is subject to the charges securing such claims, free and clear of such charges, with such charges to attach to the proceeds of such sale, and the treatment of such charges on proceeds under paragraph (a) of sub-section (2); or
 - (v) for the realization by such holders of the indubitable equivalent of such claims;
- (b) With respect to a class of unsecured claims, —
- (i) the plan provides that each holder of a claim of such class receives or retain on account such claim property of a value, as of the effective date of the plan, equal to the allowed amount of each claim; or
 - (ii) the holder of any claim or interest that is subordinate to the claims of such class will not receive or retain under the plan on account of such subordinate claim or interest any property;
- (c) With respect to a class of interest the plan provides either,—
- (i) that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled or the value of such interest; or
 - (ii) or the holder of any interest that is subordinate to the interests of such class will not receive or retain under the plan on account of such subordinate interest any property; or
 - (iii) if no class of interest is subordinate to a particular class of interest, then that the plan provides that no superior class shall receive more than 100% of its allowed claims.

54. Effect of confirmation by the Court.— (1) The provisions of a plan confirmed by the Court bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan and any creditor or shareholder in the debtor, whether or not the claim or interest of such creditor or shareholder is impaired under the plan and whether or not such creditors or shareholder has accepted the plan.

- (2) Except as otherwise provided in a plan confirmed by the Court,—
 - (a) the property dealt with by such plan shall be free and clear of all claims and interests of creditors or shareholders in the debtor;
 - (b) the debtor is discharged from any debt that arose before the date of such confirmation, as well as any debt deemed by this Act to have arisen before the date of such confirmation; and
 - (c) all rights and interests of shareholders stand terminated.

55. Implementation of the plan.— (1) The debtor or entity responsible for the purpose of carrying out the plan or any part thereof shall carry out the plan and shall comply with any orders of the Court.

(2) The Court may direct the debtor and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property dealt with by a confirmed plan and to perform any other act, including the satisfaction of any charge, that is necessary for the consummation of the charge.

56. Revocation of an order of confirmation or order of dissolution.— (1) Where an order of confirmation has been passed, the Court may at any time within one year of the date of confirmation of the plan, on request of an interested party and after notice and a hearing, make an order, upon such terms as the Court thinks fit, declaring the confirmation to have been void.

(2) The Court may pass an order under sub-section (1) if the order of confirmation to be declared void was procured by fraud.

(3) An order under this section revoking an order of confirmation shall provide for all such measures as are necessary to protect any entity, which has acquired rights in good faith reliance on the order of confirmation.

57. Special tax provisions.— (1) The creation, issuance, transfer or exchange of a security or the making or delivery of an instrument of transfer under a confirmed plan, shall exempt from under any law.

(2) An amount which is written off under a confirmed plan shall not be taxable under any law which provides for such amount being treated as a taxable gain to the debtor.

Chapter 5 – Corporate Rehabilitation Board

58. Establishment of the Board. (1) There shall be established a Board to be known as the Corporate Rehabilitation Board.

(2) The Board shall be a body corporate with perpetual succession and a common seal and may sue or be sued in its own name and subject to and for the purposes of this Act, may enter into contracts and may acquire, purchase, take, hold and enjoy moveable and immovable property of every description and may convey, assign, surrender, yield up, charge, demise, reassign, transfer or otherwise dispose of or deal with any moveable and immovable property or any interest vested in it, upon which terms and conditions as it deems fit.

59. Head office. — (1) The head office of the Board shall be at Islamabad or such other place in Pakistan as the Federal Government may by order determine.

(2) The Board may establish and close down offices at such other places in Pakistan as it considers necessary.

60. Creation, composition and constitution of the Board. — (1) The Board shall consist of not more than **six members including a Chairperson**.

(2) The members shall be appointed by the Commission in consultation with the State Bank of Pakistan on such terms and condition as deemed proper.

(3) A member shall be a natural person who is known for his integrity, expertise and experience in the field of law, banking, accountancy, corporate insolvency, management, economics or finance.

(4) The members of the Board appointed under sub-section (2) shall hold office for a term of three years and shall cease to hold office on the expiration of that term and shall be eligible for reappointment for similar term and shall cease to hold office on attaining the age of sixty-five years or the expiry of the term whichever is earlier.

(5) The Board shall discharge its functions, exercise its powers and conduct its proceedings in such manner as may be prescribed by regulations.

61. Powers and functions of the Board. — (1) The Board shall have all such powers as may be necessary to perform its duties and functions under this Act.

(2) The Board may, having regard to its functions and to exercise its powers efficiently, organize itself into committees, divisions or other such sub- committees or sub-divisions as it considers expedient.

(3) The Board shall be responsible for the performance of the following functions, namely:—

- (a) prescribing standards, criteria and codes of conduct for administrators under this Act;
- (b) admitting natural persons as administrators under this Act on to its rolls, conducting examinations for the purposes of such admission, maintaining a roll of such administrators and removing administrators from such rolls;
- (c) conducting disciplinary proceedings against administrators and removing them from the rolls;
- (d) training administrators and certifying the training of such administrators;
- (e) training and certifying chartered accountants for the purposes of valuation and forensic examination of insolvent companies;
- (f) encouraging scholarship in corporate and commercial laws and particularly in the field of corporate insolvency;
- (g) periodically reviewing developments in international insolvency regimes and reviewing the laws of Pakistan to see whether they are in accordance with international best practices and publishing annual report with respect thereto;
- (h) employing and hiring employees of the Board and holding them accountable in accordance with the procedures laid down by it; and
- (i) performing all other functions conferred on it by or under this Act.

62. Chairperson. — (1) The Commission shall, in consultation with the State Bank of Pakistan, appoint from amongst the Members of the Board, a Chairperson of the Board on such terms and conditions as it may determine.

(2) The Chairperson shall be the chief executive officer of the Board and shall, together with the other members, be responsible for the day to day administration of the affairs of the Board and shall, subject to the bye-laws made by the Board, be assisted by the other members of the Board in carrying out the functions of the Board.

63. Resignation and filling of vacancies. — (1) The Chairperson or any member of the Board may, by writing under his hand addressed to the Chairman of the Commission, resign from his office.

(2) Any vacancy occurring in the membership of the Board caused due to death, removal or resignation shall be filled in accordance with the provisions of this Act.

(3) In the case of a vacancy occurring in the office of the Chairperson, the Commission may nominate any member of the Board to act as the Chairperson for a maximum period of two months, during which period the Commission shall fill in the vacancy by appointing a regular Chairperson in accordance with this Act.

(4) No act, proceeding, decision or order of the Board shall be invalid by reason of the existence of a vacancy in or defect in the constitution of the Board.

64. Appointment of employees of the Board.— The Board may, from time to time, employ persons to be employees of the Board who shall be paid such remuneration and allowances and shall hold their employment on such terms and conditions as the Board may determine.

65. Appointment of advisers and consultants.— (1) Subject to sub-section (2), the Board may employ and pay advisers, consultants, agents, contractors and technical or professional persons to render assistance to the Board to transact any business or perform any of its functions under this Act.

(2) The decision to employ and the terms of employment of external advisers and consultants shall be made by the Board in accordance with such policy guidelines as the Board may determine from time to time.

66. Delegation of the Board's functions or powers.— (1) The Board may, subject to such terms and conditions as it may deem fit to impose, delegate any of its functions or powers to one or more Members of the Board or any officer or employee of the Board.

(2) The delegation of any function or power under this section shall not prevent the concurrent performance or exercise by the Board of the functions or powers so delegated.

67. Fund, accounts and reports of the Board.— (1) There shall be a Fund of the Board to be called the Rehabilitation Fund which shall be financed from the following sources, namely:—

- (a) grants or other assistance from domestic and international donor agencies;
- (b) fees charged from administrators for their training, certification, examinations and admission on to the rolls;
- (c) income and earnings on account of its operations and investments; and
- (d) grants from the Federal Government.

(2) The Fund shall be expended for the purpose of paying any expenditure lawfully incurred by the Board including all remuneration, pays and allowances, fees and costs, purchasing or hiring equipment, acquiring or leasing property, repaying any financial accommodation or money borrowed along with profit and return thereupon and generally all costs and expenses in relation to the performance of its functions or the exercise of its powers by the Board under this Act.

(3) The accounts of the Board shall be,—

- (a) maintained in such form and manner as the Commission may determine; and
- (b) audited by chartered accountant within the meaning of the Chartered Accountants Ordinance, 1961 (X of 1961).

(4) The Board shall, after the end of every financial year, submit to the Commission the audited annual statement of accounts of the Board together with its auditor's report.

68. Authentication of decisions, etc.— All decisions of the Board shall be authenticated by the signature of the Chairperson or of any other Member authorized by it in this behalf and all other orders or instruments issued or executed by or on behalf of the Board shall be authenticated by the signature of an officer of the Board authorized by it.

69. Chairperson, Members and officers etc. to be public servants.—The Chairperson, Members, officers, employees, consultants and advisers of the Board shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code, 1860 (Act XLV of 1860).

70. Power to make bye-laws.— The Board may, with the prior approval of the Commission and by notification in the official Gazette, make bye-laws for exercising its powers and performing functions under this Act

Chapter 6 — Corporate Restructuring Company

71. Corporate Restructuring Companies.— (1) The provisions of this Chapter shall apply to companies licensed by the Commission under this chapter to carry out the business of,—

- (a) acquisition, management, restructuring and resolution of non-performing assets of financial institutions; and
- (b) restructuring, reorganization, revival and liquidation of commercially or financially distressed companies and their businesses.

(2) No Corporate Restructuring Company shall be incorporated without prior approval of the Commission.

(3) No Corporate Restructuring Company shall carry on business unless it is established as a public limited company under the Ordinance and holds a license issued in this behalf by the Commission and any such license may be issued subject to such general or special conditions as the Commission may deem fit to impose.

(4) The Commission shall make regulations, which may provide for conditions relating to,-

- (a) qualifications and termination of directors, chairman, chief executive, chief financial officer and auditors;
- (b) licensing, capital and audit requirements; and
- (c) any other matter which the Commission may deem necessary for the purposes of giving due effect to the provisions of this chapter.

72. Functions and powers.— (1) Without prejudice to the generality of the provisions of sub-section (1) of section 71, a Corporate Restructuring Company may exercise one or more of the following functions and powers, namely:—

- (a) to acquire, buy, hold, manage, restructure, reschedule, resolve, settle, recover, assign, transfer and dispose off non-performing assets;

- (b) to deal with any loan, advance, financial commitment, lease, hire-purchase, rental, sale and buy-back arrangement, mudaraba, musharaka, ijara or other financial transaction or security interest relating to non-performing assets;
 - (c) to acquire, take over, hold, re-organize, restructure, encumber, assign, sell, lease and otherwise deal with any asset, property, undertaking or collateral with respect to non-performing assets;
 - (d) to acquire, hold, manage, restructure, reorganize, revive, merge, amalgamate, lease, liquidate, assign and dispose off distressed companies, their businesses and properties;
 - (e) to advise, develop, advance, support, implement and raise finances for plans of rehabilitation, restructuring, reorganization or liquidation of distressed companies, their businesses and properties;
 - (f) to enter into partnerships, joint venture agreement, profit or loss sharing arrangement or otherwise collaborate or participate with any company or other person associated or concerned with non-performing assets or distressed companies;
 - (g) to commence, continue, defend, desist, enforce, implement and perform any and all actions or activities in relation to non-performing assets and distressed companies; and
 - (h) to establish, promote, concur or participate in establishing or promoting any company or other entity, the establishment or promotion of which may seem, directly or indirectly, to benefit the business mentioned under sub-section (1) of section 71.
- (2) No Corporate Restructuring Company or its directors, officers and agents shall perform any function and exercise any power under this Act so as,—
- (a) to involve in speculative transactions;
 - (b) to aid an obligor with the sole object to avoid its debt obligations or performance of a contract, remove its assets and properties from the reach of its creditors, evade payment of any tax, duty or other fiscal charge to Government Agency;
 - (c) to circumvent fair valuation and proper appraisal of non-performing assets and the collateral thereof by reputable evaluating and appraising entities;

- (d) to transact business other than at arm's length; and
- (e) not to comply with the applicable laws, except as expressly provided otherwise under this Act.

73. Transfer of non-performing assets.— (1) Notwithstanding anything to the contrary contained in any law, decree, judgment, order, contract, instrument or document,-

- (a) a financial institution may after the prior approval of its Board, transfer and assign its non-performing assets to a Corporate Restructuring Company, other than a Corporate Restructuring Company established, owned or controlled by itself, by entering into a transfer and assignment agreement with it on such terms and conditions as may be mutually agreed upon between them;
- (b) on the vesting date, all rights, title, interest, benefits, privileges and remedies of such financial institution, in and against the non-performing assets and the obligors thereto, shall stand transferred, assigned, conveyed, sold and vested in favor of the Corporate Restructuring Company without the need of any further action, agreement or instrument;
- (c) a transfer and assignment agreement under section 3 shall not be required to be stamped or compulsorily registered under any law; and
- (d) all contracts, deeds, instruments, approvals, commitments or consents relating to the non-performing assets subsisting or having effect immediately before the vesting date and to which the transferor may have been a party or beneficiary shall be of full force and effect in favor of or against the Corporate Restructuring Company and may be enforced or acted upon as fully and effectively as if, in the place of such financial institution, the Corporate Restructuring Company had been a party or beneficiary.

(2) The rights, powers and remedies provided to a Corporate Restructuring Company under this Chapter may be exercised separately or concurrently by it and are in addition to and not in lieu or derogation of any other rights or remedies that it or any other person may legally have in respect of non-performing assets and the collateral thereof.

74. Legal proceedings.— (1) All proceedings by or against a transferor relating to the non-performing assets transferred to a Corporate Restructuring Company and the obligors and collateral thereof, which may be pending before any Court, tribunal, arbitrator or authority immediately before the vesting date, shall —

- (a) be continued, prosecuted, defended, enforced and executed by or against the Corporate Restructuring Company in the same manner and to the same extent as might have been continued, prosecuted, defended, enforced and executed by or against the transferor;
- (b) proceed from the stage which such proceedings had reached on the vesting date and shall not require any fresh filing, recalling and rehearing of any witness or recording of any evidence already completed; and
- (c) be continued, decided and disposed of in accordance with the provisions of the respective law, as amended or re-enacted, under which the same were instituted or filed.

(2) Any new proceedings by or against the Corporate Restructuring Company may be instituted and shall be entertained, adjudicated and disposed of in accordance with the laws, as amended or re-enacted, under which proceedings were authorized to be instituted by or against the transferor, respectively, including the Financial Institutions (Recovery of Finances) Ordinance, 2001 (XLVI of 2001), the Companies Ordinance, 1984 (XLVII of 1984), the Offences in Respect of Banks (Special Courts) Ordinance, 1984 (IX of 1984), Code of Civil Procedure, 1908 (Act V of 1908) and the Code of Criminal Procedure, 1898 (Act V of 1898).

(3) Without prejudice to the provisions of sub-section (2), a Corporate Restructuring Company shall be deemed to be a financial institution for the purposes of paragraph (a) of section 2 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (XLVI of 2001) but shall not be treated as a banking company under the Banking Companies Ordinance, 1962 (LVII of 1962).

(4) Any reference to the transferor in the proceedings referred to in this section, the record and documents of such proceedings or decrees, judgments and orders passed in such proceedings shall, except where the context otherwise requires, be construed and read as reference to the Corporate Restructuring Company.

(5) Without prejudice to the provisions of the foregoing sub-sections, the Corporate Restructuring Company may submit an application supported by the affidavit of its chief executive officer, containing particulars of the proceedings mentioned under sub-section (1), with the Registrar of the Court, tribunal, arbitrator or authority before which such proceedings are pending and on receipt of such affidavit the name of the Company in place of the transferor, as the case may be, shall be substituted.

75. Notice and discharge.— (1) A Corporate Restructuring Company may, on or after the vesting date, give a duly signed and sealed notice of transfer of the non-performing assets to the obligors, State Bank of Pakistan, Commission and any other concerned person, including, to the registering authority in whose jurisdiction any security interest with respect to such non-performing assets or any other interest concerning the collateral or any indebtedness of the obligors relating to the non-performing assets, had been recorded or registered.

(2) A transfer and assignment agreement shall not be effective as against the obligors of the non-performing assets transferred by such agreement until due notice thereof is provided to such obligors.

(3) Subject to sub-section (2), the obligors of the non-performing assets transferred and assigned to a Corporate Restructuring Company by a financial institution shall make payment to the Corporate Restructuring Company and obtain any effective discharge from it after retirement of their liabilities to the entire satisfaction of the Corporate Restructuring Company.

76. Power to require information.— (1) The Commission may, at any time, by notice in writing, require one or more Corporate Restructuring Companies to furnish it within the time specified therein or such further time as the Commission may allow, any statement, information or document relating to the business or affairs of such Corporate Restructuring Companies.

(2) No Corporate Restructuring Company or its director, officer, employee, auditor or agent shall, in any document, prospectus, report, return, accounts, information or explanation required to be furnished in pursuance of this chapter or the Regulations made under this Act, make any statement or give any information which he knows or has reasonable cause to believe to be false or incorrect or omit any material fact therefrom.

77. Special audit.— (1) The Commission shall monitor the general financial condition of the Corporate Restructuring Companies and may, at its discretion, order special audit and appoint an auditor to carry out detailed scrutiny of the affairs of one or more Corporate Restructuring Companies and the Commission may, at any time, issue such directions as it may deem appropriate.

(2) On the basis of the special audit report, the Commission may direct a Corporate Restructuring Company to do or to abstain from doing such acts that may secure the interest of its shareholders and creditors and any such directions shall be complied within such time as may be specified by the Commission.

78. Inquiry by the Commission.— (1) On the request of any concerned person or on its own motion, the Commission may cause an enquiry or inspection to be made by any person appointed in this behalf into the affairs of a Corporate Restructuring Company or its directors, officers or an associated company or undertaking.

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

(3) The person conducting an enquiry or inspection under sub-section (1) may call for, inspect and seize books of account and documents in possession of the Corporate Restructuring Company or its directors, officers or associated companies.

79. Penalty of non-compliance or contravention.— (1) Notwithstanding anything contained in any other provision of this Act, if a Corporate Restructuring Company or its director, officer or associated company fails or refuses to comply with or knowingly contravenes any provision contained in this chapter or of any of the provisions of the regulations made under this Act or any order or direction passed by the Commission under the provisions contained in this chapter or knowingly and willfully authorizes or permits such failure, refusal or contravention or makes a false statement, shall, in addition to any other penalty under this Act, be punishable by imprisonment for a period up to six months or fine of an amount not exceeding ten million rupees or both.

(2) Without prejudice to the provisions of sub-section (1), in case of contravention of any provision of this Act or the regulations made under this Act or non-compliance of any direction given or order passed thereunder by the Commission, the Commission may cancel the license of a Corporate Restructuring Company, after issuing a show cause notice and giving it an opportunity of being heard or pass any other order which may be deemed appropriate by the Commission.

(3) Upon cancellation of the license, the functions and carrying on the business of a Corporate Restructuring Company shall cease and the Commission may move the Court for winding up of the Corporate Restructuring Company.

Chapter 7 — Miscellaneous

80. Power to issue directives, circulars, guidelines, etc.— The Commission may from time to time issue such directives, circulars, guidelines, etc. as are necessary for carrying out the purposes of Chapters 5 and 6 of this Act or the regulations and bye-laws made thereunder.

81. Power to make rules.— The Federal Government may, by notification in the official Gazette, make such rules as may be necessary to carry out the purposes of this Act:

Provided that, before making any such rule, the draft thereof shall be published in the official Gazette for eliciting public opinion thereon within a period of not less than fourteen days from the date of publication.

82. Power to make regulations.— The Commission may, by notification in the official Gazette and not inconsistent with the rules, make regulations in respect of the matters expressly required in this Act to be prescribed by the Commission, subject to the condition of previous publication as provided in section 23 of the General Clauses Act, 1897 (X of 1897).

83. Power to remove difficulties.— If any difficulty arises in giving effect to the provisions of this Act, the Federal Government may, by notification in the official Gazette, make such order not be inconsistent with the provisions of this Act and as may be necessary to remove the difficulty.

84. Repeal and savings.— (1) The Corporate and Industrial Restructuring Corporation Ordinance, 2000 (L of 2000) and Non-performing Assets and Revival of Industrial Undertakings (Legal Proceedings) Ordinance, 2000 (LVIII of 2000) shall stand repealed.

(2) The repeal of any provisions of law under this Act shall not affect any proceedings pending under any such law and the proceedings shall be continue as if the said provisions had not been repealed.

STATEMENT OF OBJECTS AND REASONS

The proposed Bill intends to regulate, Rehabilitate, reorganize and restructuring of distressed corporate entities and their businesses so as to encourage economic growth and development. The corporate sector lacks a proper and logical structure and suffers from numerous inconsistencies and gaps. There is a need to make a comprehensive law to rehabilitate, reorganize and restructure of distressed corporate entities and their businesses as there is no protection to borrower of any level. This Bill is to protect borrower in Pakistan.

2. The Bill seeks to achieve the aforesaid objective.

Appendix**BPD Circular No. 29****October 15, 2002**

The Chief Executives,
All Banks / NBFIs.
Dear Sirs/ Madams,

NEW GUIDELINES ON WRITE-OFF OF IRRECOVERABLE LOANS AND ADVANCES

As you are aware the quantum of non-performing loans (NPLs) has persistently shown a rising trend. The stock of NPLs accumulated in the banking sector, has severely affected the financial health of these institutions. A multi-pronged strategy that consists of vigorous recovery by the banks themselves, restructuring under Committee for Revival of Sick Industrial Units(CRSIU), transfer and subsequent auction of loans by Corporate & Industrial Restructuring Corporation(CIRC) has produced some tangible results as far as the stock of NPLs is concerned. The best guarantee for the future is that the credit appraisal, approval, documentation and follow up by the banks themselves ensure that the flow of NPLs is averted. To facilitate the banks to deal with these loans in loss category, which have been outstanding on the books since long and for which the probability of recovery is almost negligible, the State Bank of Pakistan has developed a new set of guidelines in consultation with the banks and Federation of Pakistan Chambers of Commerce and Industry (FPCCI).

2. These revised guidelines/instructions are issued to facilitate the banks in clearing their stock of irrecoverable NPLs. However, these instructions/guidelines do not affect in any way the legal right of financial institutions to recover the written-off loans if they still wish to pursue them legally. The benefits of this approach are that the balance sheets of the banks will be strengthened and the drag of the NPLs in the lending rate to the borrowers will be eliminated.

3. The Boards of Directors of the banks are advised to set up a transparent process with properly delegated authority, internal controls and oversight to ensure that the process of write-off under these guidelines is managed and supervised properly.

4. Non Performing Loans that are classified as loss for 3 years or above have been divided into three categories viz. A, B & C:

Category A: Loans having outstanding amount upto Rs 0.5 million (Guidelines at para 9(i)' below shall apply).

Category B: Loans having outstanding amount of more than Rs 0.5 million and upto Rs.2.5 million (All the guidelines except at para '7' & '8' will be applicable).

Category C: Loans having outstanding amount of more than Rs 2.5 million (All the guidelines will be applicable).

5. Bad / irrecoverable loans as defined under '4' above, may be allowed to be written-off by the banks/NBFIs themselves with the express approval of their respective Board of Directors or their nominated/designated authority/committee. The write-offs made by the designated authority/committee shall be invariably submitted to the Board of the concerned institution for information in the next Board meeting.
6. Before allowing write-off, all liquid assets including FDRs, Government Securities, Share Certificates etc. held under lien and pledged goods should be realized and sale proceeds thereof appropriated towards the reduction of outstanding liability of the borrower. This should be legally cleared by the bank /NBFIs legal counsel.
7. The latest valuation of properties/stocks held as security having value of Rs 2.5 million and above indicating their present market value as well as their forced sale value duly assessed by a surveyor/ architect, on the approved panel of Pakistan Banks' Association (PBA), should be produced before the approving authority.
8. Before approving a write-off proposal, the competent authority should ensure that, for cases having an outstanding amount of over Rs 2.5 million, the same have been audited by the internal/external auditors who would expressly indicate the deviations / shortcomings noticed by them in the write-off proposals.
9. While allowing write-off arising as a result of settlement/compromise of cases mentioned at para '4' above, the following guidelines may be followed:-

i) Category A: Where the outstanding amount is upto Rs.500,000/-

The management should obtain a resolution from Board of Directors empowering it or its committee to write-off such loans on case-to-case basis without going for litigation. However, bank/NBFI should formulate internal policy/guidelines spelling out the criteria for write-off of these loans.

ii) Category B: Where the outstanding amount is more than Rs.500,000/- but less than Rs 2,500,000/-

Criteria	Amount to be recovered
Forced Sale Value (evaluated by the bank /NBFI) of the security is more than the outstanding amount.	75% or more of the outstanding should be recovered in cash.

Forced Sale Value (evaluated by the bank / NBFIs) of the security is less than the outstanding amount.	A sum equal to Forced Sale Value (evaluated by the bank / NBFIs) should be recovered in cash.
Where no tangible security is available.	Efforts should be made to recover maximum possible amount.

iii) Category C: Where the outstanding amount exceeds Rs 2,500,000/-

Criteria	Amount to be recovered
Forced Sale Value of the security is more than the outstanding amount.	75% or more of the outstanding should be recovered in cash.
Forced Sale Value of the security is less than the outstanding amount.	A sum equal to Forced Sale Value should be recovered in cash.
Where no tangible security is available.	Efforts should be made to recover maximum possible amount
Forced Sale Value should be determined by an independent professional valuer who should be listed on the panel of valuers maintained by the Pakistan Banks' Association (PBA)	

10. In case the bank is not in a position to recover even 75% of Forced Sale Value of the security due to any reason, the Board of Directors/designated authority may allow relaxation by recording reasons/justifications thereof.

11. Outstanding Loans include the amount of principal and interest / mark-up and other performed charges charged to the borrower's account or mark-up receivable account. Further, outstanding amount should be arrived at after deduction of liquid assets as mentioned at para '6' above. However, in case of decreed cases, the decretal amount and the mark-up allowed by the Court will be treated as outstanding amount for the purpose of this Scheme.

12. The settlement in above categories shall be made only on the basis of cash recovery. The borrower has to make at least 10% cash down payment of settled amount at the time of signing of agreement and remaining amount may be paid in installments at least on quarterly basis within a maximum period of 3 years from the date of signing of agreement. Under the above arrangements the borrower will only be eligible for write-off after repayment of entire agreed amount. In case of non-adherence of terms of agreement, the borrower will not be eligible for any concession.

13. The banks/NBFIs are further advised to vigorously pursue those delinquent borrowers who fail to avail of the Scheme within the stipulated time period by processing the cases under the provisions of law. To this end an effective in-house system for recovery of defaulted loans should be developed at Head Office level, which should be charged with the responsibilities of taking all the requisite legal measures/proceedings.
14. The banks / NBFIs shall not be eligible for any kind of payment / compensation whatsoever from State Bank of Pakistan on account of write-offs allowed by the banks/NBFIs.
15. The banks / NBFIs are advised to modify their internal policy guidelines / instructions on write-off of loans and advances accordingly.
16. Full particulars of loans written-off should be reported to the Credit Information Bureau, Banking Supervision Department, State Bank of Pakistan on quarterly basis.
17. In case of any dispute between the borrower and the bank/NBFI the matter will be resolved through SBP Committee.
18. The scheme issued by the banks/NBFIs on above guidelines shall be a one-time opportunity, which will expire on April 14, 2003. The banks/NBFIs shall, however, formulate and issue their policy based on above guidelines accordingly.
19. For write-off in all other categories, instructions/guidelines notified by the State Bank from time to time shall remain in force.
20. Please acknowledge receipt.