

[AS PASSED BY THE SENATE]

A

BILL

to amend the Deposit Protection Corporation Act, 2016

WHEREAS it is expedient to amend the Deposit Protection Corporation Act, 2016 (XXXVII of 2016), in the manner and for the purposes hereinafter appearing;

It is hereby enacted as follows:—

1. **Short title and commencement.**—(1) This Act shall be called the Deposit Protection Corporation (Amendment) Act 2024.

(2) It shall come into force at once.

2. **Amendment of preamble, Act XXXVII of 2016.**—In the Deposit Protection Corporation Act, 2016 (Act XXXVII of 2016), hereinafter referred to as the said Act, in the preamble, for the words “small depositors in order to ensure”, the expression “the depositors of member institutions, in order to contribute towards” shall be substituted.

3. **Amendment of section 2, Act XXXVII of 2016.**—In the said Act, in section 2,—

(i) after clause (b), the following new clause shall be inserted, namely:—

“(ba) “bridge institution” means bridge bank or any other entity established under section 42H of the Banking Companies Ordinance, 1962 (LVII of 1962);”;

(ii) after clause (d), the following new clause shall be inserted, namely:—

“(da) “eligible depositors” means such depositors as stated under sub-section (1) of section 8;”;

(iii) in clause (f), for word “such”, the letter “a” shall be substituted, and after the words “has been notified”, the words “as such” shall be inserted;

(iv) in clause (k) the expression "subject to exceptions under section 8" shall be omitted; and

(v) after clause (l), the following new clause shall be inserted, namely:-

"(la) "resolution" refers to the process of exercising one or more of the resolution powers as provided in section 42E of the Banking Companies Ordinance, 1962 (LVII of 1962), with a view to achieve the resolution objectives, including by ensuring the continuity of a member institution's critical functions, as specified by the State Bank;"

4. Substitution of section 5, Act XXXVII of 2016.— In the said Act, for section 5, the following shall be substituted, namely:—

"5. Objectives of the Corporation.— The objectives of the Corporation are to protect eligible depositors from losses to the extent of protected deposits and contribute to financial stability by reimbursing such deposits in a failed institution and providing financial support for the resolution of a member institution."

5. Insertion of new section 5A, Act XXXVII of 2016.— In the said Act, after section 5, amended as aforesaid, the following new section shall be inserted, namely:—

"5A. Member institutions of the Corporation.— All banks scheduled under sub-section (2) of section 37 of the State Bank of Pakistan Act, 1956 (XXXIII of 1956) and microfinance banks as defined under section 2 of the Microfinance Institutions Ordinance, 2001 (LV of 2001) unless exempted or excluded by the Board, shall compulsorily be member institutions of the Corporation and liable to pay the prescribed premium."

6. Amendment of section 6, Act XXXVII of 2016.— In the said Act, in section 6,—

(i) in clause (e), after the word 'the' occurring for the first time, the word 'eligible' shall be inserted;

(ii) in clause (l) the word "and" occurring at the end shall be omitted;

(iii) in clause (m), for the full stop at the end, a semi colon shall be substituted and thereafter the following new clauses shall be added, namely:-

- “(n) make or cause to be made payments for resolution of a member institution;
- (o) recover payments on account of financial support provided and costs incurred for resolution; and
- (p) enter into an agreement or memorandum of understanding or any reciprocal arrangement, with other deposit protection agencies, by whatever name called, or any domestic or foreign authorities responsible for the supervision, regulation or resolution of financial institutions or any other authority, in pursuance of its objectives, notwithstanding the provisions of any other law for the time being in force, and subject to measures the Corporation considers appropriate to protect the confidentiality of any non-public information:

Provided that any agreement or memorandum of understanding or any reciprocal arrangement, with any foreign regulatory, supervisory or resolution authority under this clause, shall be carried out subject to the prior approval of the Federal Government.”.

7. Amendment of section 7, Act XXXVII of 2016.—In the said Act, in section 7,—

(i) in sub-section (1),—

- (a) the word “full” shall be omitted;
- (b) after the words “funds held in”, the words “an eligible” shall be inserted; and
- (c) for the expression “deposits, up to an amount”, the expression “deposit accounts, up to an amount and in the manner as” shall be substituted;

(ii) in sub-section (3),—

- (a) for the expression “Islamic banking institutions”, the expression “member institutions operating under Islamic mode of finance” shall be substituted; and
- (b) for the word “Board”, occurring at the end, the words “Advisory Committee” shall be substituted; and

(iii) in sub-section (4),—

- (a) for the words "guarantee amount" occurring twice, the words "amount of protected deposit" shall be substituted; and
- (b) after the word "circulation" occurring at the end, the words "and on the website of the Corporation" shall be added.

8. Amendment of section 8, Act XXXVII of 2016.— In the said Act, in section 8,—

- (i) for the heading of section "Exceptions", the heading "Eligible depositors and exceptions" shall be substituted.
- (ii) in sub-section (1),—
 - (a) for the expression "Protected deposits shall not cover the deposits of—", the expression "All depositors of the member institution, except for the following, shall be eligible depositors:" shall be substituted;
 - (b) in clause (g), after semicolon at the end, the word "or" shall be added;
 - (c) in clause (h) for the expression "Companies Ordinance, 1984 (XLVII of 1984); or" occurring at the end, the expression "Companies Act, 2017 (XIX of 2017), excluding a company registered as a single member company, Trust, Non-Governmental Organization or Non-profit Organization." shall be substituted; and
 - (d) clause (i) shall be omitted;
- (iii) after sub-section (1), amended as aforesaid, the following new sub-section shall be inserted namely:—

“(1A) The Board may exclude any other person or class of persons, institution or depositor from eligible depositors and any type of deposits or funds from protected deposits:

Provided that such exclusions may be reviewed by the Board from time to time. Such decision shall be published by the Corporation in two daily newspapers having wide circulation and on the website of the Corporation.”; and
- (iv) in sub-section (2),—
 - (a) for the words "Protected deposits shall not cover", the word "The" shall be substituted; and

- (b) after the word "offence", occurring at the end, the expression ", shall not be guaranteed under this law" shall be added.

9. Amendment of section 9, Act XXXVII of 2016.—In the said Act, in section 9, after sub-section (5), the following new sub-section shall be added, namely:—

"(6) An amount equal to the paid-up capital of the Corporation contributed under sub-section (2) shall always remain preserved and shall not be used for payment to eligible depositors or providing financial support for resolution or for any other purpose except for making investments as specified under section 19."

10. Amendment of section 10, Act XXXVII of 2016.— In the said Act, in section 10, in sub-section (2), in clause (b), the expression "from among the persons who," shall be omitted.

11. Amendment of section 14, Act XXXVII of 2016.— In the said Act, in section 14, in clause (a), for the word "is", the word "becomes" shall be substituted.

12. Amendment of section 15, Act XXXVII of 2016.— In the said Act, in section 15, in sub-section (1), after the word "Board", the expression "and the Managing Director respectively," shall be inserted.

13. Amendment of section 17, Act XXXVII of 2016.— In the said Act, in section 17, in sub-section (1), for clause (e), the following shall be substituted, namely:-

- "(e) proceeds received from resolution or winding-up of a member institution for claims arising out of payment to eligible depositors or financial support for resolution; or".

14. Amendment of section 18, Act XXXVII of 2016.— In the said Act, in section 18, in sub-section (1), after clause (b), the following new clause shall be inserted, namely:-

- "(ba) interim loan or finance by the State Bank, on such terms and conditions as the State Bank may specify, subject to an irrevocable written guarantee of the Federal Government in favor of the State Bank to secure the repayment of the facility;"

15. Amendment of section 20, Act XXXVII of 2016.— In the said Act, in section 20, in sub-section (1),—

- (i) for the words "a depositor" occurring first, the words "an eligible depositor", shall be substituted;

- (ii) for the expression "the depositor's", the expression "the eligible depositor's" shall be substituted; and
- (iii) the expression "In establishing the member institution's total liability to a depositor, foreign currency deposits shall be taken at equivalent amount at the exchange rate declared by the State Bank at the date of the State Bank's notification under sub-section (1) of section 21." shall be omitted.

16. Substitution of section 21, Act XXXVII of 2016.— In the said Act, for section 21, the following shall be substituted, namely:—

"21. Terms and procedures for reimbursement of protected deposits.— (1) The State Bank shall, by a notification to the Corporation, declare a member institution as a failed institution if:—

- (a) the State Bank has withdrawn the license of the member institution; or
- (b) an order has been made by the High Court to wind up the member institution; or
- (c) the State Bank has determined that the member institution is unable to pay its depositors.

(2) The Corporation shall pay eligible depositors of the failed institution up to the amount protected, in the cases where the State Bank has issued a notification under sub-section (1).

(3) The Corporation shall owe no interest or return on protected amounts.

(4) The Corporation shall pay the amount of protected deposit in cash or through transfer to any banking company or in any other way as determined by the Board.

(5) As soon as possible, after the issuance of notification under sub-section (1), the Corporation shall collect necessary information and cause the same to be published in at least two daily newspapers having wide circulation and on the website of the Corporation, including information about the date after which eligible depositors shall be paid by the Corporation and the procedure for payments.

(6) Payments from the Corporation to the eligible depositors shall begin as early as possible from the date of the notification under sub-section (1). The Corporation shall ensure that payments to most of the eligible depositors are made or tendered within seven working days and that all payments are made or tendered within thirty working days at the latest, if there is no dispute as to the entitlement to, or ownership of, the deposit or where such deposit is not withheld or blocked in accordance with any law for the time being in force or under any order of Court.

(7) For foreign currency denominated deposits, the eligible depositor shall be paid the Rupee equivalent of the protected deposit amount at the exchange rate declared by the State Bank on the day of the notification under sub-section (1).

(8) In order to ensure smooth payment of protected deposit to eligible depositors, the Corporation may—

- (a) request the State Bank to assist in utilizing the branch network and any other resources of the member institution, declared as failed under sub-section (1);
- (b) request the liquidator appointed under section 51 of the Banking Companies Ordinance, 1962 (LVII of 1962), to facilitate in reimbursement of protected deposits;
- (c) engage one or more member institutions for making payment to eligible depositors;
- (d) issue necessary directives to the member institutions for making payments of protected deposits; and
- (e) make payment directly to eligible depositors through bank draft or any other mode available.

(9) A member institution's liability towards its eligible depositors shall be reduced proportionally by the amounts paid by the Corporation to them under sub-section (2) and shall be replaced by an equivalent liability to the Corporation.

(10) A failed member institution shall be liable to the Corporation for an amount equal to any financial support provided under section 22A by the Corporation for its resolution and for any direct costs incurred by the Corporation for providing financial support or making payments to the eligible depositors.

(11) For the amount so paid by the Corporation to eligible depositors and to the extent of financial support provided for resolution, the Corporation shall assume and replace all rights of every such depositor including their priority rights under section 58 of the Banking Companies Ordinance, 1962 (LVII of 1962).

(12) The Corporation shall regularly notify the liquidator or the assignee in bankruptcy of the failed institution about the amount paid by the Corporation to any eligible depositor, any direct costs incurred and any financial support provided for the resolution of a member institution.

(13) As and when requested by the Corporation, the liquidator of the failed institution or the bridge institution shall share information with the Corporation on all recoveries and proceeds received from sale of assets of that failed institution.”

17. Substitution of section 22, Act XXXVII of 2016.— In the said Act, for section 22, the following shall be substituted, namely:—

“22. Priority of claims.—(1) Notwithstanding anything contained in the Companies Act, 2017 (XIX of 2017), and any other law in respect of insolvency or liquidation or tax, the claim of the Corporation against the failed institution shall have priority over all unsecured claims under section 58 of the Banking Companies Ordinance, 1962 (LVII of 1962) to the extent of:

- (a) protected deposit paid or to be paid;
- (b) financial support provided for resolution of the failed institution;
- (c) any direct costs incurred for such payments and support; and
- (d) any arrears of outstanding premium.

(2) For the avoidance of doubt, it is clarified that payment to eligible depositors, to the extent of protected deposit, of a failed institution as declared under sub-section (1) of section 21 shall be made only through the Corporation.”.

18. Insertion of new sections 22A, 22B and 22C, Act XXXVII of 2016.— In the said Act, after section 22, substituted as aforesaid, the following new sections shall be inserted, namely:—

“22A. Provision of financial support for resolution.— In the event of resolution of a member institution under the provisions of the Banking Companies Ordinance, 1962 (LVII of 1962), the Corporation may provide financial support to facilitate the process of resolution, subject to the provisions laid down in sub-section (1) of section 22B, in accordance with the resolution scheme prepared by the State Bank and as per the procedures approved by the Board.

22B. Terms and conditions for provision of financial support for resolution.— (1) No financial support shall be provided by the Corporation for resolution of a member institution unless the State Bank, based on its assessment shared with the Corporation, has concluded that:—

- (a) as a result of resolution, protected deposits shall be owed by a viable member institution;
- (b) the resolution of the member institution requires financial support to be provided by the Corporation;
- (c) as a result of resolution, holders of all classes of share capital and any subordinated debt have absorbed or will absorb the losses immediately before an order is made under section 42D of the Banking Companies Ordinance, 1962 (LVII of 1962);
- (d) any financial support by the Corporation under sub-section (1) shall not exceed the estimated amount

needed to reimburse eligible depositors under sub-section 2 of section 21 and any direct costs associated for such reimbursement:

Provided that where all assets and liabilities of a member institution are transferred under a scheme of amalgamation, the estimated recoveries of the Corporation in the event of the winding-up of the member institution shall be deducted from the amount provided by the Corporation for such financial support.

(2) Where the protected deposits have been transferred to a transferee institution or a bridge institution during resolution, the Corporation shall be deemed to have discharged its reimbursement obligations in relation to protected deposits in the member institution under resolution.

22C. Modes for providing financial support for resolution.—

(1) The Corporation may provide financial support, based on the valuation under sub-section (2) of section 42E of the Banking Companies Ordinance, 1962 (LVII of 1962), for resolution of a member institution by:—

- (a) paying any difference between the assets and liabilities to be transferred to a transferee institution under a scheme of amalgamation, or to a bridge institution;
- (b) issuing guarantees or providing indemnities for losses related to the transferred assets and liabilities under a scheme of amalgamation;
- (c) paying any compensation under sub-section (7) of section 42E of the Banking Companies Ordinance, 1962 (LVII of 1962), to the extent arising because of any action taken by the State Bank to facilitate the transfer of protected deposits under a scheme of amalgamation; or
- (d) contributing to the recapitalization of the member institution under a scheme of reconstruction, to the extent that protected deposits would have absorbed losses in line with their priority under section 58 of the Banking Companies Ordinance, 1962 (LVII of 1962), if these deposits had not been part of exclusions under section 42G of the Banking Companies Ordinance, 1962 (LVII of 1962).

(2) In case the liquidator under the Banking Companies Ordinance, 1962 (LVII of 1962), has prepared a scheme to transfer the assets and liabilities of the member institution under liquidation to a transferee institution in terms of powers provided under sub-section (4) of section 51 of the Banking Companies Ordinance, 1962 (LVII of 1962), the Corporation may provide financing to the extent of difference between the assets and liabilities to be transferred to the transferee institution:

Provided that—

- (a) the State Bank or its nominee has been appointed as official liquidator;
- (b) the State Bank is of the view that scheme prepared by the liquidator will facilitate in protecting the interest of eligible depositors;
- (c) protected deposits shall be owed by a member institution which State Bank considers as viable;
- (d) reimbursement to eligible depositors has not yet been initiated; and
- (e) financial support shall not exceed the estimated amount needed to reimburse the protected deposits under sub-section (2) of section 21 and any direct costs associated for such reimbursement net of expected recoveries.”.

19. Amendment of section 25, Act XXXVII of 2016.— In the said Act, in section 25, in sub-section (1), for the word “small” shall be omitted.

20. Insertion of new section 25A, Act XXXVII of 2016.— In the said Act, after section 25, amended as aforesaid, the following new section shall be inserted, namely:—

“25A. Coordination between the Corporation and the State Bank.— The Corporation and the State Bank shall, with mutual consultation, establish a mechanism for information sharing and coordination.”.

21. Amendment of section 34, Act XXXVII of 2016: —In the said Act, in section 34, in sub-section (1), after the word “institution”, the words “or conduct visits to review such information” shall be inserted.

22. Substitution of section 35, Act XXXVII of 2016.— In the said Act, for section 35, the following shall be substituted, namely:—

“35. Protection of actions taken in good faith and indemnity.— (1) No suit, prosecution or any other legal proceedings including compensation for damages shall lie against the Corporation, its Chairman, Managing Director, Board of Directors or members thereof and officers and employees of the Corporation for any act of commission or omission done in exercise or performance of any functions, power or duty conferred or imposed by or under this Act upon such persons or any rules and regulations made thereunder, unless such act of commission or omission is proven beyond reasonable doubt to have been done in bad faith and with mala fide intent.

(2) The Chairman, Managing Director, Directors, members of any Board committee and officers and employees of the Corporation shall not be liable in their personal capacity for any act of commission or omission undertaken in their official capacity in good faith. In case

of any such proceedings as mentioned in sub-section (1), they shall be indemnified by the Corporation which shall bear all the expenses thereof, unless an act or omission has been subsequently determined to have been undertaken in bad faith and with mala fide intent.”.

23. Amendment of section 36, Act No. XXXVII of 2016.— In the said Act, in section 36, in sub-section (2), in clause (a), for the word “banks”, the word “institutions” shall be substituted.

STATEMENT OF OBJECTS AND REASONS

For the sake of stability of financial system, the bank resolution and recovery regime in Pakistan is being further strengthened. Resolution of financial institutions often depends upon a sound and reliable funding mechanism in order to enable the Resolution Authority to prepare and execute an effective resolution scheme that would be able to bridge any gaps in assets and liabilities of a non-viable bank. Preferably, such funding mechanism should be independent of exchequer funds so that tax-payers' money may not be needed for banks' resolution except under extreme circumstances. For this purpose, the funds held by a deposit insurance agency can be used for providing financial support. Such support by deposit protection agency is conceptually similar to the protection provided to depositors, in case of bank failure, as in both cases the funds provided by the deposit protection agency is used to protect depositors' interest and contribute towards financial system's stability.

The amendments in the Deposit Protection Corporation (DPC) Act, 2016 are aimed at enhancing the mandate of the DPC from 'Pay-box only' to Pay-box plus' i.e. to facilitate in the resolution of its member institutions. For the purpose, proposed amendments in the Act particularly envisage: i) clearly mentioning in the objectives of the Corporation the enhanced role of fund contribution by the Corporation for resolution; ii) Inclusion of microfinance banks in DPC's ambit; iii) Outlining Corporation's business and functions in line with the enhanced role; iv) funding arrangements in case of shortfall of funds; v) Declaration of bank failures; vi) Priority of claims of the Corporation with respect to funds contributed in resolution and depositor reimbursement; vii) Financial support for resolution and related terms and conditions and modes of such support, and viii) Protection of actions taken by the Corporation and its officials in good faith and their indemnity.

The Deposit Protection Corporation Act (Amendment Bill) 2023 is designed to achieve the aforementioned purposes.


Muhammad Aurangzeb
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