

[AS PASSED BY THE SENATE]

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BILL

further to amend the Banking Companies Ordinance, 1962

WHEREAS it is expedient further to amend the Banking Companies Ordinance, 1962 (LVII of 1962), 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 Banking Companies (Amendment) Act, 2023.

(2) It shall come into force at once.

2. Amendment of section 3A, Ordinance LVII of 1962.—In the Banking Companies Ordinance, 1962 (LVII of 1962), hereinafter referred to as the said Ordinance, in section 3A,—

(a) in sub-section (1),—

- (i) after the expression “13,” the expression “15C,” shall be inserted;
- (ii) the expression “25AA,” shall be omitted;
- (iii) for the expression “47,” the expression “42A, 42B, 42C, 42D, 42E, 42F, 42G, 42I,” shall be substituted;
- (iv) after the expression “84,” the expression “93C, 93CA” shall be inserted;
- (v) for the word “may”, occurring for the second time, the words “in consultation with the State Bank” shall be substituted; and

(b) after sub-section (1), amended as aforesaid, the following new sub-section (1A) shall be inserted, namely:-

“(1A) The provisions of sections 41C, 42, 42A, 42B, 42C, 42D, 42E, 42F, 42G, 42H, 42I, Part III, 93C and 93CA shall, with such modification as the State Bank may determine from time to time to achieve objectives mentioned in the said sections, apply to the microfinance banks licensed under the Microfinance Institutions Ordinance, 2001 (LV of 2001) and shall have effect notwithstanding anything to the contrary contained in the Microfinance Institutions Ordinance, 2001 (LV of 2001).”.

3. Amendment of section 5, Ordinance LVII of 1962.—In the said Ordinance, in section 5,—

(i) for clause (a), the following shall be substituted, namely:-

“(a) “approved securities” means the securities in which a trustee may invest money under the applicable trust laws, and for the purpose of—

(i) sub-section (2) of section 13, includes such other securities as the Federal Government may, by notification in the official Gazette, declare to be approved securities for the purpose of that sub-section; and

(ii) sub-section (1) of section 29, includes—

(a) such types of Pakistan rupee obligations of the State Bank as it may specify from time to time; and

(b) such types of Pakistan rupee obligations of the Federal Government or a Provincial Government or of a corporation wholly owned or controlled, directly or indirectly, by the Federal Government or a Provincial Government and guaranteed by the Federal Government as the Federal Government may, by notification in the official Gazette, declare to the extent determined from time to time to be approved securities for the purpose of that sub-section;”;

(ii) after clause (c), the following new clause shall be inserted, namely:-

“(ca) “banking company under Resolution” means a banking company in respect of which the State Bank has made an order under section 42D and until such time that the State Bank by an order declares that the banking company concerned is no longer under Resolution or until a winding-up order is made under this Ordinance;”;

- (iii) after clause (d), the following new clause shall be inserted, namely:-

“(da) “bridge bank” means an entity established under section 42H to temporarily take over and maintain some or all of the assets and liabilities of a banking company as part of the Resolution process;”;

- (iv) after clause (f), the following new clause shall be inserted, namely:-

“(fa) “Executive Committee” means an Executive Committee established under section 9F of the State Bank of Pakistan Act, 1956 (XXXIII of 1956);”;

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

“(ha) “Minister-in-charge” means the Federal Minister, to whom business of this Act stands allocated;”

- (vi) after clause (k), the following new clause shall be inserted, namely:-

“(ka) “Resolution” refers to the process of exercising one or more of the Resolution powers as provided in section 42E with a view to achieve the Resolution objectives including by ensuring the continuity of a banking company’s critical functions, as specified by the State Bank;” and

- (vii) after clause (mm), the following new clause shall be inserted, namely:-

“(mma) “sponsor shares” means five percent or more paid-up shares of a banking company, held or beneficially owned by a person individually or in concert with his family members, group companies, subsidiaries and associates;”.

4. Amendment of section 14, Ordinance LVII of 1962.—In the said Ordinance, in section 14,—

- (i) in sub-section (1),—

- (a) in clause (ii), after the word "only", occurring at the end, the words "which may be of different kinds and classes as provided by its memorandum and articles" shall be inserted;
 - (b) clause (iii) shall be omitted; and
 - (c) in clause (iv), after the words "Provincial Government", the words "or such shareholder who has been permitted by the State Bank" shall be inserted;
- (ii) for sub-section (4), the following shall be substituted, namely:-

"(4) The State Bank, if satisfied, may require any banking company by an order in writing stating reasons to increase its paid up capital or enhance the level of regulatory capital, as deemed appropriate, by such extent and within such period as may be specified in the order and the State Bank shall exercise the power reasonably, fairly and justly.";

- (iii) after sub-section (4) substituted as aforesaid, the following new sub-section shall be inserted, namely:-

"(4A) Any person holding sponsor shares in a banking company shall deposit all such shares in an account opened in a central depository in the manner specified by the State Bank and shall not sell, transfer or encumber the shares in any manner whatsoever without prior written approval of the State Bank.";

- (iv) in sub-section (5),—

- (a) in clause (d), in sub-clause (ii), for the words "Central Depository Company", the words "relevant central depository" shall be substituted; and
- (b) in clause (e), the word "Central", occurring twice, shall be omitted and after the word "Board", occurring at the end, the words "of Directors of the State Bank" shall be inserted;

- (v) for the explanation, the following shall be substituted, namely:-

"Explanation.— The expression "beneficial ownership" shall include the definition of "beneficial

ownership of shareholders or officer of a company" given in clause (7) of sub-section (1) of section 2 of the Companies Act, 2017 (XIX of 2017).".

5. **Omission of section 15B, Ordinance LVII of 1962.**—In the said Ordinance, section 15B shall be omitted.

6. **Substitution of section 15C, Ordinance LVII of 1962.**—In the said Ordinance, for section 15C, the following shall be substituted, namely:-

"15C. Fitness and propriety.— (1) Every person holding sponsor shares in a banking company, director, managing director or chief executive officer, by whatever name called, and such other officer of a banking company, as may be specified by the State Bank, shall be required to meet the fit and proper test specified by the State Bank from time to time.

(2) Every person to whom the fit and proper test applies and the banking company concerned shall furnish to the State Bank all information and any change in the information furnished earlier, in such form and manner as may be required by the State Bank.

(3) If the State Bank determines that a person holding the office of director, managing director or chief executive officer, by whatever name called, or any other officer of a banking company to whom the fit and proper test applies, subsequently fails to meet any terms or conditions of the test, the State Bank may, without prejudice to any other power conferred on it under this Ordinance, issue warning, or withdraw the fit and proper clearance of such person by an order in writing stating the reasons thereof and such person shall vacate the office held from the effective date of such an order:

Provided that the State Bank has given an opportunity of hearing, if sought by the person, to make representations or file objections in respect of the State Bank's decision regarding their fit and proper test application:

Provided further that no order for withdrawal of fit and proper clearance shall be made under this sub-section unless the concerned person has been given a reasonable opportunity of making a representation to the State Bank against the said order, and if the State Bank is of the opinion that any delay would be detrimental to the public interest or the interest of the banking company or its depositors, the State Bank may, at

the time of giving the opportunity aforesaid or at any time thereafter and pending the consideration of the representation aforesaid, if any, make an appropriate interim order. The aggrieved person shall have the right to appeal to the Board of Directors of the State Bank whose decision shall be final."

7. Amendment of section 23, Ordinance LVII of 1962.—In the said Ordinance, in section 23, in sub-section (1),—

- (a) after the word "formed", the words "with the prior written approval of the State Bank" shall be inserted;
- (b) after clause (c), the following new clause shall be inserted, namely.:-

“(ca) the carrying on of business as a microfinance bank under the provisions of the Microfinance Institutions Ordinance, 2001 (LV of 2001);” and

- (c) in clause (d), the expression "with the previous permission in writing of the State Bank," shall be omitted.
- (d) in clause (dd), the word "or", shall be omitted;
- (e) after clause (dd) the following new clause shall be inserted, namely.:-

“(ddd) for carrying on business, exclusively for development causes, as may be approved by the State Bank; or”

8. Amendment of section 25, Ordinance LVII of 1962.— In the said Ordinance, in section 25, in sub-section (3), for the expression "which may extend to twenty thousand rupees and, where the default is a continuing one, of a further amount which may extend to one thousand rupees for every day after the first during which the default continues", the words "as specified in the Fourth Schedule" shall be substituted.

9. Omission of section 25AA, Ordinance LVII of 1962.— In the said Ordinance, section 25AA shall be omitted.

10. Amendment of section 26A, Ordinance LVII of 1962.— In the said Ordinance, in section 26A, in sub-section (5), in clause (c), for the word "prescribed" occurring twice, the word "specified" shall be substituted.

11. Amendment of section 27, Ordinance LVII of 1962.— In the said Ordinance, in section 27,—

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(a) in sub-section (4),—

(a) in clause (iii), for colon at the end, a semi-colon and word “; or” shall be substituted;

(b) after clause (iii) amended as aforesaid, the following new clauses shall be inserted, namely:-

“(iv) if the banking company is engaged in or is being used for criminal activities; or

(v) if the banking company has destroyed or concealed, or moved outside of Pakistan all or part of its assets, the administration, operation and books or records without the explicit approval of the State Bank; or

(vi) if the banking company has created material hindrance, delay or obstruction for the State Bank in performance of its supervisory functions.”; and

(c) for the proviso, the following shall be substituted, namely:-

“Provided that before cancelling a license,—

(i) under clause (ii) or clause (iii) of this sub-section on the ground that the banking company has failed to comply with or has failed or ceased to fulfil any of the conditions referred to therein; or

(ii) under clause (iv), clause (v) or clause (vi) of this sub-section,

the State Bank, unless it is of opinion that the delay will be prejudicial to the interest of the company's depositors or the public, shall provide an opportunity of being heard to the banking company or, as the case may be, shall grant to the company on such terms as it may specify, an opportunity of taking the necessary steps for complying with or fulfilling such condition.”; and

(b) in sub-section (5), the word “Central” shall be omitted and after the words “Board of”, the words “Directors of” shall be inserted.

12. Amendment of section 29, Ordinance LVII of 1962.— In the said Ordinance, in section 29, in sub-section (1), in the proviso, for the full stop, a colon shall be substituted and thereafter the following proviso shall be added, namely:-

“Provided further that the State Bank may, from time to time, specify the types of assets mentioned in this sub-section which shall not be eligible for the maintenance of liquid assets.”.

13. Amendment of section 30, Ordinance LVII of 1962.— In the said Ordinance, in section 30, in sub-section (1), for the word “prescribed” occurring twice, the word “specified” shall be substituted.

14. Amendment of section 31, Ordinance LVII of 1962.— In the said Ordinance, in section 31,—

(i) in sub-section (1),—

- (a) in clause (a), for the word “owing”, the word “owed” shall be substituted and for the word “ten”, the word “fifteen” shall be substituted;
- (b) in clause (b), for the word “ten”, the word “fifteen” shall be substituted;
- (c) in clause (c), for the word “ten”, the word “fifteen” shall be substituted and the word “or” shall be omitted; and
- (d) after clause (c), amended as aforesaid, for clause (d) and explanation therein, the following shall be substituted, namely:-

“the banking company shall give forthwith a three months’ notice in writing by registered post acknowledgement due to the creditor or the beneficiary of the cheque, draft or bill of exchange on his address last made known by him to the banking company, and if on the expiry of the three months’ period no acknowledgement or reply is received from the addressee, the banking company shall pay to the State Bank an amount equal to the amount, owing by the banking company in respect of the debt or to the amount that would be owing if the instrument had been presented for payment, including profit, if any, and payment accordingly shall discharge the banking company from all

liabilities in respect of the debt or instrument, as the case may be.”;

(ii) in sub-section (2),—

- (a) for the word “by”, the word “under” shall be substituted;
- (b) in clause (c), the words “or article standing in the names of more than one person,” shall be omitted;
- (c) in clause (d), the words “or wrapper” occurring twice shall be omitted;

(iii) in sub-section (3), the words “or wrapper” shall be omitted;

(iv) in sub-section (5), the words “or delivered an article” shall be omitted and the words “or article” shall be omitted;

(v) for sub-section (7), the following shall be substituted, namely:-

“(7) Every banking company shall, within thirty days after the close of each calendar year, submit to the State Bank a return in the specified form and manner of all unclaimed amounts remaining unpaid in the books of the banking company, after the expiry of fifteen years as reckoned under sub-section (1).”;

(vi) for sub-section (8), the following shall be substituted, namely:-

“(8) The State Bank shall place on its website a list of the amounts received by it under sub-section (1) and not claimed by any person:

Provided that public attention shall be drawn towards the list of amounts so placed on the website through public notices in not less than two newspapers and media channels once each quarter.”;

(vii) for sub-section (9), the following shall be substituted, namely:-

“(9) Any banking company which has paid any amount to the State Bank in accordance with sub-

section (1) may, within thirty days from the date of such payment, submit to the State Bank its claim as regards lien, counter-claim or right of set-off in relation to the amount so paid.”;

(viii) in sub-section (10),—

- (a) the words “or article” shall be omitted;
- (b) the words “or delivered” shall be omitted; and
- (c) after the word “Bank”, occurring for the second time, the words “through the concerned banking company as per the procedure laid down by the State Bank from time to time” shall be added;

(ix) for sub-section (11), the following shall be substituted, namely:-

“(11) Subject to sub-sections (9) and (14), the State Bank may pass such order on a claim submitted to it under sub-section (9) or sub-section (10) as it may deem fit after satisfying itself as to the genuineness of the claim, and where the State Bank makes any payment to any person submitting a claim under sub-section (10), a receipt given by him shall be a final discharge to the State Bank.”;

(x) sub-section (12) shall be omitted;

(xi) for sub-section (13), the following shall be substituted, namely:-

“(13) Subject to sub-sections (9) and (14), any amount paid to the State Bank under sub-section (1) shall remain in the custody of the State Bank.”;

(xii) for sub-section (14), the following shall be substituted, namely:-

“(14) Notwithstanding anything contained in sub-section (1) about the giving of a notice by a banking company to any creditor or beneficiary of any cheque, draft or bill of exchange, or in sub-section (8) about the placement by the State Bank of the list of unclaimed amounts, the procedure to be followed and the manner of disposal of debts and instruments in a case where the person concerned is not for the time being residing in

Pakistan shall be such as may be determined by the State Bank from time to time.”;

- (xiii) in sub-section (15), the words “or article” shall be omitted; and
- (xiv) after sub-section (15) amended as aforesaid, the following new sub-sections shall be inserted,--

“(15A) Where any security, share, goods, currency or any other valuable article (hereinafter collectively called article) lying in safe custody of or in a customer’s locker with a banking company has been transferred to the vault of the banking company by reason of the customer having failed to pay the rent or fee in accordance with the agreement between the parties or otherwise in accordance with the instructions issued by the State Bank, details of such articles shall be submitted to the State Bank in the manner as specified by the State Bank. The banking company shall publish factum of the same on its website in the manner as specified by the State Bank.

(15B) With the prior written permission of the State Bank, a banking company may close suspended, blocked or frozen accounts of designated or proscribed individuals and/or entities. In the event the State Bank authorizes such closure, the banking company shall transfer the deposits, if any, to the credit of such suspended, blocked or frozen accounts to the State Bank.”

15. Amendment of section 33, Ordinance LVII of 1962.— In the said Ordinance, section 33 shall be renumbered as sub-section (1) thereof, and after sub-section (1), renumbered as aforesaid, the following new sub-section shall be added, namely:-

“(2) The State Bank may publish any information regarding its enforcement actions including warning, penalty, order of removal, or any other action against a banking company or a director, chief executive or any other officer of a banking company, if deemed necessary for the interest of the banking company or its depositors, public interest or the prevention of the use of the financial system for

any illegal activity including money laundering or financing of terrorism.”.

16. Amendment of section 34, Ordinance LVII of 1962.— In the said Ordinance, in section 34,—

- (a) in sub-section (3), for the expression “the form marked ‘F’ in the Third Schedule to the Companies Act 1913”, the expression “the Companies Act, 2017 (XIX of 2017)” shall be substituted; and
- (b) in sub-section (4),
 - (a) after the word “notice”, the words “by posting on its website” shall be added; and
 - (b) for the words “notification in the official Gazette”, the word “circular” shall be substituted.

17. Substitution of section 36, Ordinance LVII of 1962.— In the said Ordinance, for section 36, the following shall be substituted, namely:-

“36. Submission of returns.— The accounts and balance-sheet referred to in section 34 together with the auditor’s report as passed in the Annual General Meeting shall be published in the manner specified by the State Bank, and three copies thereof shall be furnished as returns to the State Bank within three months of the close of the period to which they relate:

Provided that the State Bank may in special circumstances either of its own motion or on the application of a banking company, extend the said period of three months for the furnishing of such returns by such further period as it deems appropriate, so however that the total period of each extension shall not exceed one year.”.

18. Insertion of heading and new sections, Ordinance LVII of 1962.— In the said Ordinance, after section 39, the following new heading and sections shall be inserted namely:-

**“Part – IIA
Islamic Banking**

39A. Scope and application.— Save as expressly provided in this part, the provisions hereof shall apply to all Islamic banking institutions as defined hereunder in clause (a) of section 39B and wherever applicable to Islamic financial institutions as defined in clause (h) of section 39B and shall have effect notwithstanding anything contained to the contrary in the Ordinance or in any other law for the time being in force. All the provisions of this Ordinance

except sub-sections (1), (2), (3) and (4) of section 26A shall be applicable to Islamic banking institutions unless repugnant to *Shariah*.

39B. Definitions.— The terms defined herein would only be applicable for this part and notwithstanding anything contained to the contrary in this Ordinance, the following defined terms will have the meaning assigned to them under this part:-

(a) "Islamic banking institution" means:

- (i) a full-fledged Islamic banking company, where its entire business and operations are in accordance with the Principles of *Shariah* (as defined herein below) and is licensed by the State Bank for this purpose;
- (ii) an Islamic banking subsidiary of a banking company, where the entire business and operations of this subsidiary are in accordance with the Principles of *Shariah* and is licensed by the State Bank for this purpose; or
- (iii) dedicated Islamic banking branch or branches of a banking company, where the entire business and operations of the branch or branches are in accordance with the Principles of *Shariah* and is licensed by the State Bank for this purpose.

(b) "Islamic Deposit Account" means an account in which a sum of money is accepted by an Islamic banking institution as per related agreed terms and conditions, consistent with applicable regulations of the State Bank;

(c) "Islamic Deposit Account Holder" means a person having Islamic deposit account at an Islamic banking institution;

(d) "Investment Account" means an account in which a sum of money is accepted by an Islamic banking institution in accordance with the Principles of *Shariah* and shall be payable by the Islamic banking institution as per related agreed terms and conditions. It includes following categories of accounts:

- (i) "Unrestricted Investment Account" means an account in which a sum of money is accepted in accordance with the Principles of *Shariah* on a profit and loss sharing basis and which shall be managed

or invested at the absolute discretion of the Islamic banking institution in accordance with the Principles of *Shariah*.

- (ii) "Restricted Investment Account" means an account in which a sum of money is accepted in accordance with the Principles of *Shariah* and which shall be managed or invested on the basis of an agreement on a specific investment mandate between the Islamic banking institution and the investment accountholder, in accordance with the Principles of *Shariah*.
- (e) "Investment Account Holder" means a person having an investment account at an Islamic banking institution;
- (f) "Ordinance" means Banking Companies Ordinance, 1962 (LVII of 1962);
- (g) "*Shariah*" means the injunctions of Islam as laid down in the Holy Quran and Sunnah;
- (h) "Islamic financial institution" means the financial institutions covered in section 3A and permitted by the State Bank to conduct their business and operations in accordance with Principles of *Shariah*;
- (i) "Principles of *Shariah*" mean the following principles governing Islamic banking and finance:
 - (i) prohibition of all forms of Riba and Usury;
 - (ii) prohibition of transactions featuring excessive uncertainty (*Gharar*) and prohibition of gambling (*Maysir* and *Qimar*);
 - (iii) adherence to all *Shariah* requirements related to specific relationships, arrangements and transactions;
 - (iv) facilitation of a sustainable economic system, risk and reward sharing, and social justice;
 - (v) avoidance of injustice, exploitation, hoarding, fraud, deception and activities that are deemed harmful to society.

39C. Business.— Islamic banking institutions shall undertake business and operations consistent with the Principles of *Shariah* and these shall include:

- (a) Accepting Islamic Deposit Accounts on modes, based on the Principles of *Shariah*, as specified by the State Bank.
- (b) Accepting Restricted and Unrestricted Investment Accounts on modes, based on the Principles of *Shariah*, as specified by the State Bank.
- (c) Doing such businesses as are prescribed in section 7 of this Ordinance subject to conformity with the Principles of *Shariah*, as specified by the State Bank.

39D. Relationship between an Islamic banking institution or Islamic financial institution and its customers.— The relationship between an Islamic banking institution or Islamic financial institution and its customers with regard to any transactions or arrangements that are in conformity with the Principles of *Shariah* shall be determined in accordance with the contractual terms governing such transactions or arrangements.

39E. Shariah Governance.— (1) *Shariah* governance shall refer to the set of institutional and organizational arrangements at an Islamic banking institution or Islamic financial institution through which effective independent oversight of compliance with the Principles of *Shariah* over each of the undertaken activities, structures and processes is ensured as per the State Bank's regulations, directives, instructions, notifications, circulars and guidelines.

(2) Ensuring an effective *Shariah* governance framework shall be one of the key responsibilities of the Board of Directors of the Islamic banking institution or Islamic financial institution.

(3) An Islamic banking institution or Islamic financial institution shall—

- (a) Comply with all *Shariah* regulatory standards and requirements concerning their operations as specified in the State Bank's regulations, directives, instructions, notifications, circulars and guidelines.
- (b) Comply with any requirements related to *Shariah* governance framework as specified in the State Bank's regulations, directives, instructions, notifications, circulars and guidelines.

(4) A banking company undertaking business and operations through dedicated Islamic banking branches after getting a separate license shall have policies, internal systems, procedures, and controls as per the State Bank's regulations, directives, instructions, notifications, circulars and guidelines to ensure that:

- (a) all the transactions, arrangements and dealings of the Islamic banking branches are in accordance with the Principles of *Shariah*;
- (b) banking business and operations of dedicated branches are properly segregated; and
- (c) the banking company provides adequate disclosures in this regard.

39F. Priority of payments to Islamic deposit account holders, investment account holders and other claimants.— In case of the liquidation of an Islamic banking institution or Islamic financial institution, the State Bank shall prepare a scheme, consistent with the Principles of *Shariah*, for making of payments to the Islamic deposit account holders, investment account holders and other claimants.

39G. Charity.— (1) Where the Islamic banking institution or Islamic financial institution, in compliance with the State Bank's regulations, directives, instructions, notifications, circulars and guidelines on charity policy, determines that any portion of the income earned by an Islamic banking institution or Islamic financial institution is not in conformity with the Principles of *Shariah*, and where late payment by the customer is charged with a penalty, Islamic banking institution or Islamic financial institution shall credit such amounts as notified by the State Bank into a charity fund. The charity fund shall be maintained and utilized in such a manner as specified by the State Bank from time to time.

(2) In cases where the State Bank has determined that any income earned by an Islamic banking institution or Islamic financial institution is not in conformity with the Principles of *Shariah*, it shall direct the institution concerned to credit such income into the charity fund as specified by the State Bank.

39H. Separate Regulatory Instructions.— The State Bank shall specify regulations, directives, instructions, notifications, circulars and guidelines for Islamic banking institutions or Islamic financial institutions, including but not limited to definitions of Islamic modes and concepts of Islamic banking and finance, types of Islamic deposit accounts and investment accounts, certificates of

investment, profit & loss distribution and pool management, and any other area as may be deemed necessary by it.

39I. Conversion and Establishment of Islamic Banking Subsidiary.— (1) A banking company may convert its one or more branches or entire business and operations into an Islamic banking institution.

(2) A banking company shall establish an Islamic banking subsidiary or shall convert it into a full-fledged Islamic bank if:

- (a) its Islamic banking branches exceeds 50% of the number of the total branches; or
- (b) the share of its Islamic banking assets exceeds 50% of its total assets; or
- (c) the capital attributable to its Islamic banking branches operations reaches the minimum required capital specified by the State Bank for an Islamic banking subsidiary.

(3) The State Bank may issue regulations, directives, instructions, notifications, circulars, or guidelines, as the case may be, under this section from time to time.

39J. Penalties.— The State Bank shall impose separate penalties on Islamic banking institutions and Islamic financial institutions, specifically with reference to non-compliance with the Principles of *Shariah*. Further, the State Bank may take penal action against members of Board of Directors, management, and personnel of other organs of governance, including *Shariah* governance, for violation of their fiduciary duties and other obligations.

39K. Other provisions relating to Islamic banking.— (1) The provisions of this part shall be in addition to the other provisions of the Ordinance relating to Islamic banking and shall be read accordingly.

(2) Except for the sub-sections (1), (2), (3) and (4) of section 26A, all other provisions of this Ordinance mentioning the term "deposits" of conventional banks shall also be construed to cover "Islamic deposit accounts" and "investment accounts" of Islamic banking institutions.

(3) All provisions of this Ordinance mentioning the term "depositors" of conventional banks shall also be construed to cover

the "Islamic deposit account holders" and "investment account holders" of Islamic banking institutions.

39L. Savings.— Any regulations, directives, instructions, notifications, circulars, guidelines or any act or thing done by the State Bank in relation to banking business which is based on *Shariah* before the coming into force of this part shall be deemed to have been validly issued or done under the Ordinance."

19. Insertion of new heading, Ordinance LVII of 1962.— In the said Ordinance, after section 39L, inserted as aforesaid, the following new heading, shall be inserted namely:—

**"Part – IIB
Supervision".**

20. Amendment of section 41, Ordinance LVII of 1962.—In the said Ordinance, in section 41,—

- (i) in sub-section (2), for the expression "directions, guidelines and instructions", the expression "orders, regulations, directions, guidelines, instructions, notifications, and circulars or impose any condition" shall be substituted; and
- (ii) after sub-section (3), the following new sub-section shall be inserted, namely,—

“(4)(a) The State Bank may direct any banking company or class of banking companies to—

- (i) submit a recovery plan, where applicable on a group-wide basis, in the form, content and manner as directed by the State Bank, outlining the actions designed to run the banking company as a going concern and return to business as usual, under such scenarios as identified by the banking company or specified by the State Bank from time to time;
- (ii) remove any impediments to the implementation of the plan and make revisions in the recovery plan; and

(iii) revise and update its recovery plan regularly or in case of any material changes in the circumstances of the banking company or as the State Bank deems necessary.

(b) The banking company shall notify the State Bank immediately on any event that may necessitate the implementation of its recovery plan.

(c) The recovery plan shall not prejudice the powers conferred on the State Bank to take other measures provided under this Ordinance.”.

21. Amendment in section 41A, Ordinance LVII of 1962.— In the said Ordinance, in section 41A, in sub-section (1), in clause (d), after the word “remove”, the expression “, suspend or debar” shall be inserted.

22. Substitution of section 41C, Ordinance LVII of 1962.—In the said Ordinance, for section 41C, the following shall be substituted, namely:-

“41C. Limitations.— (1) No decision or order under section 41A, section 41B, clause (q) of sub-section (2) of section 42, clause (i) and (iv) of sub-section (1) of section 42C, section 42D, and sub-section (1) of section 42E shall be made except by the Executive Committee. Provided that an order under section 41A, section 41B, clause (q) of sub-section (2) of section 42 and section 42D shall be made by the Executive Committee on a report by the standing committee set up by the State Bank for the purpose. All orders on decisions of the Executive Committee under this sub-section shall be signed by the Chairman of the Executive Committee.

(2) Any person or banking company aggrieved by any decision or order of the Executive Committee under sub-section (1) may make an appeal to the Board of Directors of the State Bank whose decision shall be final.

(3) No action taken under sections 41A, 41B, sub-section (2) or part II-C shall be called in question by or before any court, tribunal or other authority.”.

23. Amendment in section 41D, Ordinance LVII of 1962.—In the said Ordinance, in section 41D, after the expression “41A”, the expression “and clause (a) of sub-section (1) of section 42E” shall be inserted.

24. Substitution of section 42, Ordinance LVII of 1962.—In the said Ordinance, for section 42, the following shall be substituted, namely:-

“42. Intervention triggers and powers of the State Bank.—

(1) The State Bank may exercise any one or more of the powers under sub-section (2) of this section, if it is satisfied that any of the circumstances exist under which—

(a) a banking company—

- (i) has engaged any director, chief executive, by whatever name called, or an officer of a banking company who is or is likely to be detrimental to the interest of the banking company or its depositors or otherwise undesirable;
- (ii) is carrying on its business in a manner detrimental to the interests of its depositors, creditors or other stakeholders;
- (iii) has contravened any provisions or any restrictions or conditions imposed on its license;
- (iv) has contravened or circumvented any provision of section 41 or any other provision of this Ordinance, or defaulted in complying with any requirement of this Ordinance or of any order, rule, direction or notification made or condition imposed thereunder;
- (v) in any return, balance-sheet or other document or in any information required or furnished by or under or for the purposes of any provision of this Ordinance, makes a statement which is false in any material particular, or omits to make a material statement;
- (vi) has failed or is likely to fail to meet capital adequacy or minimum capital requirements specified by the State Bank;
- (vii) has failed or is likely to fail to meet the liquidity requirements as specified by the State Bank;
- (viii) has suffered deterioration in its financial condition; or
- (ix) has engaged or is engaging in any unsafe, unsound, imprudent or reckless business practices; or

- (b) any person, being the chairman, director, chief executive, by whatever name called, or an officer of a banking company:
 - (i) has breached fiduciary duties or engaged in reckless business practices;
 - (ii) mismanages the affairs of the banking company or misuses his position for gaining direct or indirect benefit for himself or any of his family members;
 - (iii) contravenes, or attempts to contravene, or abets the contravention of the provisions of this Ordinance; or
 - (iv) has failed to comply with the supervisory instructions by the State Bank.

(2) Subject to sub-section (1), the State Bank may, keeping in view the gravity of the situation and compliance behavior of the banking company, from time to time, exercise any one or more of the following powers, namely—

- (a) caution or prohibit the banking company against entering into any particular transaction or class of transactions;
- (b) require the banking company to refrain from taking such actions as it may specify in relation to any matter relating to the business of such banking company or to take such action in relation thereto as the State Bank thinks fit;
- (c) require the banking company to submit a plan of action for meeting the capital, or liquidity requirements and to address any other major supervisory concerns;
- (d) require the banking company to meet such capital and liquidity requirements as may be specified by the State Bank for such banking company;
- (e) require the banking company to call a meeting of its directors for the purpose of considering any matter relating to or arising out of the affairs of the banking company, or require an officer of the banking company to discuss any such matter with an officer of the State Bank;

- (f) require the banking company or Board of Directors of the banking company to furnish documents of commitment for compliance with the measures specified by the State Bank and to secure the interests of its depositors;
- (g) depute one or more of its officers to watch the proceedings at any meeting of the Board of Directors of the banking company or of any committee or of any other body constituted by it; require the banking company to give an opportunity to the officers so deputed to be heard at such meetings and also require such officers to send a report of such proceedings to the State Bank;
- (h) require the Board of Directors of the banking company or any committee or any other body constituted by it to give in writing to any officer specified by the State Bank in this behalf at his usual address all notices of, and other communications relating to, any meeting of the Board, committee or other body constituted by it;
- (i) appoint one or more of its officers to observe the manner in which the affairs of the banking company or of its offices or branches are being conducted and make a report thereon;
- (j) require the banking company to make such changes in the management within such time as the State Bank may consider necessary in consequence of the state of affairs disclosed during or by the inspection;
- (k) require such changes in the Board of Directors of the banking company, as the State Bank may consider necessary;
- (l) suspend from office, the chairman or director or chief executive officer, by whatever name called, or other officer of the banking company, with effect from such date and for such period as may be specified by the State Bank;
- (m) require the banking company to convene the general meeting of the members for purposes of the adoption of measures deemed necessary by the State Bank;

- (n) require banking company to limit any discretionary remuneration to any director, chief executive officer or other officer of the banking company concerned;
- (o) require the banking company to implement its recovery plan and report its progress to the State Bank at such intervals as may be specified by the State Bank;
- (p) require the divestment of specified loss-making or risky assets or business lines; or
- (q) require the banking company to carry out any capital reduction and cancel any portion of shares of the banking company which is depleted or unrepresented by available assets; or dilute the participation of the existing shareholders by issuing new shares or reduce full or part of the preference shares, subordinated debt or subordinated Sukuk, by whatever name called, as issued by the banking company or convert these instruments into ordinary shares, as permitted by the terms of such instruments. Any action under this clause shall have effect notwithstanding the provisions contained in sections 89 to 97 of the Companies Act, 2017 (XIX of 2017), sub-section (2) of section 87 of the Securities Act, 2015 (III of 2015) or any other law for the time being in force.

(3) Where the voting shares of a banking company are to be acquired for the purposes of a recapitalization as an early intervention measure under this section, the Securities and Exchange Commission of Pakistan, upon a request by the prospective acquirer and in consultation with the State Bank, may exempt any such acquisition from section 111 of the Securities Act, 2015, where applicable.”

25. Insertion of new heading and sections, Ordinance LVII of 1962.— In the said Ordinance, after section 42 substituted as aforesaid, the following new heading and sections shall be inserted namely:-

**“Part – IIC
Resolution of Banking Companies**

42A. Resolution authority.—Without prejudice to its powers under this Ordinance and any other law for the time being in force,

the State Bank shall be the Resolution authority of banking companies and institutions specified under section 3A of this Ordinance.

42B. Resolution objectives.— The primary objectives of Resolution shall be contributing to the stability of the financial system of Pakistan and the protection of the interest of depositors.

42C. Resolution planning.— (1) To give effect to the Resolution objectives as set out in section 42B, the State Bank may—

- (i) prepare a plan for the orderly Resolution of a systemically important bank as specified by the State Bank, or any other banking company and update such plans at regular intervals or at any other time it deems necessary;
- (ii) at regular intervals or at any other time as it deems necessary, conduct resolvability assessment of a systemically important bank or any other banking company with a view to identify any impediments for the orderly Resolution of such banking company;
- (iii) direct the banking company concerned to demonstrate that there is no impediment to its resolvability; and may call any information or document or assistance from the banking company concerned, its sponsors, or any entity within the group of which the banking company concerned is a part, within the time, form and manner set out in the direction; and
- (iv) take such steps for the removal of impediments identified under this section or issue directions to the banking company concerned, or its sponsor shareholders, to take any measures for removal or mitigation of the effects of impediments within a time period as specified by the State Bank in relation to its legal, operational, financial and group structure, including any measures for the separation of critical functions from other functions; intra-group dependencies, products, assets, rights or liabilities for effective Resolution of the banking company concerned.

(2) The banking company concerned and any other person, to whom any direction has been issued under this section, shall be bound to comply with such direction.

(3) The Resolution plans shall not in any way prejudice the powers conferred on the State Bank to take other measures provided under this Ordinance.

42D. Resolution triggers.— (1) The State Bank may, by an order in writing stating reasons, place a banking company under Resolution, if the State Bank is satisfied that one or more of the circumstances exist under which the banking company,—

- (i) has become or is likely to become insolvent;
- (ii) has failed to comply with the capital requirement specified by the State Bank; and
 - (a) has no reasonable prospect of becoming compliant with the relevant requirement within a reasonable timeframe in the opinion of the State Bank;
 - (b) fails to become adequately capitalized when required to do so;
 - (c) fails to submit a capital restoration plan acceptable to the State Bank within the time specified; or
 - (d) fails to implement a capital restoration plan to the satisfaction of the State Bank;
- (iii) has suspended or is likely to suspend payments as these fall due;
- (iv) has defaulted or is likely to default in making payments to depositors;
- (v) is part of a group, one or more entities of which, is under liquidation, or in respect of which a custodian, receiver, administrator or liquidator has been appointed, and the assets and liabilities of such entity or its links with the banking company are such that it may impair the ability of the

banking company to continue its operations in a safe and sound manner;

- (vi) is a branch or subsidiary of a banking company whose license to carry on banking business in the country of its origin has been cancelled or any Resolution action or insolvency proceeding in the country of origin does not sufficiently protect the financial stability of Pakistan and the interest of depositors, or the State Bank considers that no action will be taken in respect of a failing banking company in its country of origin;
- (vii) fails to implement any of the measures as required under section 42, including failure to provide a plan of action or documents of commitment or has breached requirements under any plan of action or documents of commitment submitted to the State Bank;
- (viii) is otherwise in a situation or circumstance which in the opinion of the State Bank may materially impair the ability of the banking company to make payments, meet its obligations or otherwise continue its operations; or
- (ix) has contravened, circumvented or failed to comply with any requirement of this Ordinance in a manner that seriously prejudices the financial stability in Pakistan and the interests of depositors, or has continued such contravention, circumvention or failure beyond such period or periods as may be specified in that behalf by the State Bank from time to time.

(2) The adoption of any supervisory action or any early intervention measures as set out in section 42 or the submission of any report under sub-section (2) of section 40A shall not be a precondition for Resolution.

(3) No order under this section shall be made unless the banking company concerned has been given an opportunity of making a representation to the State Bank. Provided that if in the opinion of the State Bank, any delay would be detrimental to the achievement of Resolution objectives, the State Bank may, at the

time of giving the opportunity aforesaid or at any time thereafter and pending the consideration of the representation aforesaid, if any, make an order under sub-section (1).

(4) An order made under sub-section (1) shall be notified to the banking company concerned and a summary of it shall be published, as soon as practical, on the State Bank's website with due regard to the confidentiality requirements.

(5) Except as otherwise provided in the order made by the State Bank under sub-section (1) or at any time thereafter in consultation with the Securities and Exchange Commission of Pakistan, the trading on securities exchange in shares and debt instruments of the banking company under Resolution, and disclosure and reporting requirements applicable to such a banking company by virtue of being a listed entity shall remain suspended:

Provided that provision of this sub-section shall have effect notwithstanding anything contained in the Companies Act, 2017 (XIX of 2017), the Securities Act, 2015 (III of 2015), the Securities & Exchange Commission of Pakistan Act, 1997 or any other law for the time being in force.

42E. Resolution powers.— (1) Where an order is made under section 42D, the State Bank shall have full control over the affairs of the banking company and may exercise one or more of the following powers, separately or in combination, to achieve its Resolution objectives:

- (a) remove directors or chief executive, by whatever name called, or other officer of a banking company, not being lower in rank than a branch manager;
- (b) supersede the Board of Directors of the banking company:

Provided that all powers of the general meeting of members, the Board of Directors, chief executive officer, or any other officer shall be vested with the State Bank, and the State Bank in this capacity may require any director or officer of the banking company to carry out any task it specifies;

- (c) appoint one or more, officials of the State Bank or, persons meeting its fit and proper test as an

administrator for management and operation of the banking company under Resolution. All persons appointed under this clause shall perform their powers and duties under the instructions issued by, and be entitled to such remuneration as may be specified by, the State Bank;

- (d) issue an order of moratorium in respect of a banking company under section 42F;
- (e) carry out reconstruction or amalgamation of the banking company under section 42G;
- (f) reduce or extinguish the interest or rights which the members, depositors and other creditors have in or against the banking company, to such extent as the State Bank considers necessary;
- (g) transfer in full or in part the business, assets and liabilities of the banking company to a bridge bank under section 42H;
- (h) cancel a license granted to a banking company under section 27; or
- (i) make an application to the High Court for the winding up of the banking company under section 49.

(2) The State Bank may, while exercising any of the powers referred to in sub-section (1) or otherwise, take one or more of the following actions—

- (a) engage at the expense of the banking company under Resolution, independent attorneys, accountants, auditors, valuation experts and consultants, by whatever name called, on such terms and conditions as may be specified by the State Bank:

Provided that, to ensure timely and orderly Resolution, the provisions of any law related to public procurement of services, for the time being in force, shall not apply to hiring of various service providers under this sub-section.

- (b) without prejudice to the generality of clause (a), direct or arrange an independent valuation of the assets and liabilities or shares of the banking company for the application of sub-section (1) or, as the case may be, for the application of sub-section (7) or for any other purpose as may be deemed necessary by the State Bank:

Provided that—

- (i) such a valuation shall be conducted by a valuator who shall be of good repute and has international experience in the valuation or auditing or has affiliations with audit or valuation firms that have such international experience;
 - (ii) such a valuation shall be carried out based on conservative assumptions and in accordance with the international valuation standards with due regard to specificities of banking companies, including regulatory capital requirements. Such valuation, if carried out for the Resolution purposes, shall not assume any potential future provision of public funding or the State Bank financing under section 17G of the State Bank of Pakistan Act, 1956 (XXXIII of 1956);
 - (iii) the State Bank may specify the general procedures and methodology, and other terms and conditions for valuations, having regard to the purpose of the valuation; and
 - (iv) if conducting an independent valuation is not possible for Resolution purposes, including due to the urgency of Resolution, the State Bank itself may conduct a provisional valuation; and exercise any Resolution power based on such valuation. The State Bank shall as soon as practicable thereafter cause an independent valuation to be conducted.
- (c) require any person to continue provision of such services as are necessary for continuity of critical functions of the banking company under

Resolution, or a transferee bank including the bridge bank, and such service provider shall continue these services under the terms and conditions existing prior to Resolution;

- (d) require the banking company under Resolution to provide necessary services to a transferee bank including the bridge bank for such time period as may be specified by the State Bank;
- (e) upon a request of transferee bank, transfer assets and liabilities back to the transferring bank, within a period specified during the time of transfer or in case such assets or liabilities do not meet the criteria specified, during the transfer;
- (f) without prejudice to the banking company's right to terminate contracts as per the contractual terms, rescind contracts where the State Bank considers that the performance of outstanding obligations would be detrimental to the Resolution objectives:

Provided that without prejudice to the provisions of this section on financial contracts, the counterparties of the banking company concerned may not terminate, modify, or accelerate the rights and obligations under a contract solely because of an order made under section 42D or the exercise of any powers under section 42E by the State Bank; or

- (g) temporarily suspend the right of the banking companies' counterparties to early terminate or modify or accelerate financial contracts, to which the banking company under Resolution is a party, where such rights arise due to an order made under section 42D or due to the exercise of any resolution powers:

Provided that the suspension period shall not exceed two business days, and substantive obligations under the contract shall continue to be performed.

(3) Unless provided otherwise in this ordinance, during the Resolution of a banking company, losses, if any, shall be imposed in the reverse order of the liquidation claims as provided in section 58.

(4) Unless otherwise, strictly necessary to achieve the Resolution objectives, the State Bank shall avoid treating a liability and assets securing such liability separately during the transfer of assets and liabilities, or transferring part of the rights and liabilities that are protected under a financial contract.

(5) For the application of this section, the State Bank shall specify the financial contracts.

(6) Subject to subsection (7), the State Bank may treat one or more creditors of the same class differently, if this is necessary to avoid a contagion in the financial system or a destruction of value for creditors in general, or otherwise, it would not be possible to implement the relevant Resolution action within a reasonable timeframe.

(7) A shareholder or creditor of the banking company who, as a result of the exercise of Resolution powers, recovered less than what he would have recovered in case of a winding up order under this Ordinance, may be compensated for the difference, only where the State Bank determines such difference based on an independent valuation caused under sub-section (2). Such valuation shall presume that the banking company concerned would be placed under winding up immediately before the issuance of an order as per section 42D. The valuation of assets shall be based on liquidation values. Any value created or preserved in the banking company as a result of any public support or financing under section 17G of the State Bank of Pakistan Act, 1956 (XXXIII of 1956), shall be deducted in the calculation of difference. Any such compensation shall be paid by the Deposit Protection Corporation under clause (c) of sub-section (1) of section 22C of the Deposit Protection Corporation Act, 2016 (XXXVII of 2016) or otherwise, from funds obtained under section 42I.

(8) Powers under this section shall not be subject to the approval or consent of the shareholders, debtors, creditors or any counterparty of the banking company or that of the bridge bank.

(9) The protection and indemnification provided in section 94 shall also apply to any person appointed, engaged or directed by the State Bank in pursuance of the powers conferred on it under this section and section 42H.

(10) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law or contract for the time being in force.

42F. Order of moratorium.— (1) Notwithstanding anything contained in the provisions of this Part or in any other law or any agreement or other instrument, for the time being in force, where an order is made under sub-section (1) of section 42D, the State Bank may make an order of moratorium in respect of a banking company, staying the commencement or continuance of all actions and proceedings against the banking company for a fixed period of time on such terms and conditions as it deems fit and proper and may from time to time extend the period so that the total period of moratorium, including extension thereof, shall not exceed six months.

(2) Except as otherwise provided by any directions given by the State Bank in the order under sub-section (1) or at any time thereafter, the banking company shall not during the period of moratorium make any payment to any depositors, or discharge any liabilities or obligations to any other creditors.

42G. Powers of State Bank to prepare scheme of reconstruction or amalgamation.— (1) Where an order is made under sub section (1) of section 42D, the State Bank may prepare a scheme—

- (i) for the reconstruction of the banking company, restoring the capital of the banking company to a level compliant with this Ordinance and sufficient to sustain confidence in the banking company; or
- (ii) for the amalgamation of the banking company fully or in part with any other banking institution (in this section referred to as “the transferee bank”).

(2) The scheme aforesaid may contain provisions for all or any of the following matters, namely:—

- (a) the constitution, name and registered office, the capital, assets, powers, rights, interests, authorities and privileges, the liabilities, duties and obligations, of the banking company on its reconstruction or, as the case may be, of the transferee bank;
- (b) in the case of amalgamation of the banking company, the transfer to the transferee bank of the business, properties, assets and liabilities of the banking company on such terms and conditions as may be specified in the scheme;

- (c) any change in the Board of Directors, or the appointment of a new Board of Directors, of the banking company on its reconstruction or, as the case may be, [of the transferee bank] and the authority by whom, the manner in which and the other terms and conditions on which, such change or appointment shall be made and in the case of appointment of a new Board of Directors or of any director, the period for which such appointment shall be made;
- (d) the development of new or alteration of the existing memorandum and articles of association of the banking company on its reconstruction or, as the case may be, of the transferee bank, for the purpose of altering the capital thereof or for such other purposes as may be necessary to give effect to the reconstruction or amalgamation;
- (e) subject to the provisions of the scheme, the continuation by or against the banking company on its reconstruction or, as the case may be, the transferee bank, of any actions or proceedings pending against the banking company immediately before the date of the order of moratorium or as the case may be from the effective date of coming into force of the scheme;
- (f) the cancellation or reduction, in part or whole, of the interest or rights which the members, depositors and other creditors have in or against the banking company before its reconstruction or amalgamation to such extent as the State Bank considers necessary to recognize the accumulated losses of the banking company:

Provided that the State Bank may close out and terminate a derivative contract to determine the value of interests and rights before a reduction under this clause.;

- (g) the payment to depositors and other creditors in full satisfaction of their claims in cash or otherwise, by converting the claims into shares or debt that meets

the conditions to qualify as regulatory capital, as specified by State Bank—

- (i) in respect of their interest or rights in or against the banking company before its reconstruction or amalgamation; or
 - (ii) where their interest or rights aforesaid in or against the banking company has or have been reduced under clause (f), in respect of such interest or rights as so reduced;
- (h) the allotment to the members of the banking company for shares held by them therein before its reconstruction or amalgamation, whether their interest in such shares has been reduced under clause (f) or not, of shares in the banking company on its reconstruction or, as the case may be, in the transferee bank and where any members claim payment in cash and not allotment of shares, or where it is not possible to allot shares to any members, including if a member fails to meet the fit and proper test of the State Bank, the payment in cash to those members in full satisfaction of their claim—
- (i) in respect of their interest in shares in the banking company before its reconstruction or amalgamation; or
 - (ii) where such interest has been reduced under clause (f) in respect of their interest in shares as so reduced;
- (i) transfer rights and interests of members in shares to such persons on such terms and conditions and at such consideration as may be specified in the scheme in full satisfaction of their claims—
- (i) in respect of their interest in shares in the banking company before its reconstruction or amalgamation; or

(ii) where such interest has been reduced under clause (f) in respect of their interest in shares as so reduced;

- (j) cause the banking company concerned to issue new shares without offering such shares to the members of the banking company or issue debt instruments that would meet the conditions to qualify as regulatory capital as specified by the State Bank, or amend or alter the maturity of or the amount of interest payable under such debt instruments issued by the banking company before an order made under section 42D on reconstruction of the banking company;
- (k) the continuation of the services of all the employees of the banking company, excepting such of them who, not being workmen within the meaning of the Industrial Relations Ordinance, 1969 (XXII of 1969), are specifically mentioned in the scheme, in the banking company itself on its reconstruction or, as the case may be, in the transferee bank at the same remuneration and on the same terms and conditions of service, which they were getting or, as the case may be, by which they were being governed immediately before an order made under sub-section (1) of section 42D:

Provided that the scheme shall contain a provision that—

- (i) the banking company shall pay or grant not later than the expiry of the period of three years from the date on which the scheme is approved by the State Bank or sanctioned by Federal Government, as the case may be, to the said employees the same remuneration and the same terms and conditions of service as are applicable to employees of corresponding rank or status of a comparable banking company to be determined for this purpose by the State Bank whose determination in this respect shall be final;
- (ii) the transferee bank shall pay or grant not later than the expiry of the aforesaid period of three years, to the said employees the same

remuneration and the same terms and conditions of service as are applicable to the other employees of corresponding rank or status of the transferee bank subject to the qualifications and experience of the said employees being the same as or equivalent to those of such other employees of the transferee bank:

Provided further that if in any case under clause (ii) of the first proviso any doubt or difference arises as to whether the qualification and experience of any of the said employees are the same as or equivalent to the qualifications and experience of the other employees of corresponding rank or status of the transferee bank, the doubt or difference shall be referred to the State Bank whose decision thereon shall be final;

- (l) notwithstanding anything contained in clause (k) where any of the employees of the banking company, not being workman within the meaning of the Industrial Relations Ordinance, 1969, are specifically mentioned in the scheme under clause (k), or where any employees of the banking company have by notice in writing given to the banking company or, as the case may be, the transferee bank, at any time before the expiry of one month next following the date on which the scheme is approved by the State Bank or sanctioned by the Federal Government, as the case may be, intimated their intention of not becoming employees of the banking company on its reconstruction or, as the case may be, of the transferee bank, the payment to such employees of compensation, if any, to which they are entitled under the Industrial Disputes Ordinance, 1959, and such pension, gratuity, provident fund and other retirement benefits ordinarily admissible to them under the rules or authorizations of the banking company immediately before the date of the order of moratorium;
- (m) any other terms and conditions for the reconstruction or amalgamation of the banking company;

- (n) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(3) Notwithstanding anything contained in clauses (f) and (g) of sub-section (2), the scheme shall not provide for the reduction and conversion of the following:

- (i) protected deposits under the Deposit Protection Corporation Act, 2016 (XXXVII of 2016);
- (ii) any liabilities owed to tax or social security authorities;
- (iii) liabilities in relation to contributions due to the Deposit Protection Corporation in accordance with the Deposit Protection Corporation Act, 2016 (XXXVII of 2016);
- (iv) any liability and obligation to client that arises by virtue of holding or managing the client's assets as an agent;
- (v) liabilities duly secured by financial, immovable or movable assets;
- (vi) liabilities owed to the employees of the banking company except for the incentive-based remuneration of the managers of the banking company;
- (vii) liabilities with a remaining maturity of up to seven (7) days owed to payment, settlement and clearing systems;
- (viii) liabilities to banking companies, excluding banking companies that are part of the same group, with an original maturity of less than seven days;
- (ix) liabilities to a commercial or trade creditor arising from the provision to the banking company of goods or services that are critical to the daily functioning of its operations, including information technology services, utilities and rental, servicing and maintenance of premises; and

- (x) any other claims that the State Bank has determined that their exclusion, in whole or in part, is needed pursuant to sub-section (7) of section 42E.

(4) A copy of the scheme prepared by the State Bank shall be sent in draft to the transferee bank and any other banking company concerned in the amalgamation, for suggestions and objections, if any, within such period as the State Bank may specify for this purpose.

(5) The State Bank may make such modifications, if any, in the draft scheme as it may consider necessary in the light of the suggestions and objections received from the transferee bank, and any other banking company concerned in the amalgamation.

(6) Subject to sub-section (5), the scheme as approved by the State Bank shall come into force on such date as the State Bank may specify in this behalf:

Provided that the scheme, if it involves use of public funds, shall be placed before the Federal Government for its sanction and the Federal Government may sanction the scheme without any modifications or with such modifications as it, in consultation with the State Bank and having regard to the resolution objectives stated in section 42B and such safeguards regarding the use of public funds as specified in section 42I, may consider necessary; and the scheme as sanctioned by the Federal Government shall come into force on such date as the Minister-in-charge may specify in this behalf:

Provided further that different dates may be specified for different provisions of the scheme.

(7) Upon the coming into operation of the scheme or any provision thereof, the scheme or such provision shall be binding on the banking company or, as the case may be, on the transferee bank and any other banking company concerned in the amalgamation and also on all the members, depositors and other creditors and employees of each of those companies and of the transferee bank, and on any other person having any right or liability in relation to any of those companies or the transferee bank.

(8) On such date as may be specified by the State Bank or, as the case may be, the Minister-in-charge in this behalf, the

properties and assets of the banking company shall, by virtue of and to the extent provided in the scheme, stand transferred to, and vest in, and the liabilities of the banking company shall, by virtue of and to the extent provided in the scheme, stand transferred to, and become the liabilities of, the transferee bank. Rights and interest in the shares of a banking company, by virtue of and to the extent provided in the scheme, shall stand transferred to, and vest in, such persons as specified in the scheme:

Provided that the members, depositors and creditors whose interest and rights remain in the banking company under Resolution shall have no rights or claims in respect of the assets and liabilities transferred to the transferee bank.

(9) Where the scheme provided for the reduction of the rights and interests under clause (f) of sub-section (2), any such interest in shares shall extinguish and any liability of the banking company to such depositors and creditors shall be treated as discharged for all purposes to the extent of such reduction, and these shall not be provable in any subsequent proceedings in relation to the banking company under Resolution or any transferee bank or in any subsequent winding up.

(10) If any difficulty arises in giving effect to the provisions of the scheme, the State Bank or, as the case may be, the Federal Government may by order do anything not inconsistent with such provisions which appear necessary or expedient for the purpose of removing the difficulty.

(11) Copies of the scheme sanctioned by the Federal Government under proviso of sub-section (6) or of any order made by the Federal Government under sub-section (10) shall be laid on the table of the Legislature, as soon as may be, after the scheme has been sanctioned by the Federal Government, or as the case may be, the order has been made.

(12) Where the scheme is a scheme for amalgamation of the banking company, any business acquired by the transferee bank under the scheme or under any provision thereof shall, after the coming into operation of the scheme or such provision, be carried on by the transferee bank in accordance with the law governing the transferee bank, subject to such modifications in that law or such exemptions of the transferee bank from the operation of any provisions thereof as the Federal Government, on the recommendation of the State Bank, may, by notification in the

official Gazette, make for the purpose of giving full effect to the scheme:

Provided that no such modification or exemption shall be made so as to have effect for a period of more than seven years from the date of the acquisition of such business.

(13) Nothing in this section shall be deemed to prevent the amalgamation with one or more banking institutions by a single scheme of several banking companies.

(14) The provisions of this section and of any scheme made under it shall have effect notwithstanding anything to the contrary contained in any other provisions of this Ordinance or in any other law or any agreement, award or other instrument for the time being in force.

(15) In this section, "banking institution" and "banking company" mean any banking company and includes National Bank of Pakistan, investment finance companies, venture capital companies, housing finance companies, leasing companies and any other financial institution covered under section 3A.

42H. Bridge bank.— (1) The State Bank may, prior to or during the Resolution of a banking company, establish a bridge bank as defined in clause (da) of sub-section (1) of section 5, and in exercise of the powers under clause (g) of sub-section(1) of section 42E to:

- (a) transfer those of the assets and liabilities of the banking company concerned as determined by the State Bank for orderly Resolution; and
- (b) initiate the process for liquidation of the banking company concerned.

(2) The value of the liabilities transferred to a bridge bank shall not exceed the total value of the assets transferred from the banking company under resolution or funds provided by the Deposit Protection Corporation under clause (a) of sub-section (1) of section 22C of the Deposit Protection Corporation Act, 2016 (XXXVII of 2016), or otherwise, from temporary public funding obtained under section 42I.

(3) Notwithstanding anything contained in the Companies Act, 2017 (XIX of 2017) or any other law for the time being in force

regarding the incorporation of companies, issuance of shares or other instruments of ownership, Memorandum and Articles of association of the companies, listing of companies, and payment of any fees, duties and taxes for these purposes, the bridge bank shall be incorporated, its share capital issued and allotted, and business commenced, by the order of the State Bank.

(4) The bridge bank shall be a member of the Deposit Protection Corporation.

(5) The funding for a bridge bank including its capital shall be secured under section 42I from, and its shares shall be allotted to, the Federal Government.

(6) The State Bank may prepare a scheme for the establishment of, transfer of all or part of the assets and liabilities to, and the management of the bridge bank, and the exit of the bridge bank from public control and the provisions of section 42G shall apply *mutatis mutandis* to such a scheme.

(7) The State Bank may exempt the bridge bank from compliance with any regulatory and supervisory requirement including capital requirements, as may be necessary, for a period of up to six months, which can be extended once for up to a further six months if deemed necessary by the State Bank, to facilitate business of the bridge bank or to maintain the stability of the financial system.

(8) The State Bank shall appoint a person meeting its fit and proper test as an administrator to manage the bridge bank and shall specify the responsibilities and remuneration of such person, who shall be subject to the instructions issued to him by the State Bank:

Provided that no State Bank Official can be appointed as an administrator of the bridge bank.

(9) Within a period of three years from the establishment of a bridge bank under sub-section (1), the State Bank shall take all possible measures to utilize one of the following options:

- (a) merger of the bridge bank with another banking company;
- (b) sale of majority shareholding of the bridge bank to one or more persons;

- (c) transfer whole or substantial part of the assets and liabilities of the bridge bank to one or more banking companies:

Provided that the State Bank shall be at liberty to delay utilization of the options provided under this sub-section beyond the said period of three years where it is satisfied that the delay would be in the interests of its Resolution objectives, for such period as it thinks fit, in which instance the State Bank shall publish on its website the reasons for such extension; so however the period of each extension shall not exceed one year;

(10) Where in the opinion of the State Bank, none of the options given under sub-section (9) is possible, or where no further extension in term of the bridge bank is warranted, the bridge bank shall be wound up under section 59 or otherwise under section 49.

42I. Temporary Public Funding for Resolution.— (1) Where an order has been made under section 42D and in the opinion of the State Bank, public funding is required for the orderly Resolution of the banking company or a bridge bank, the Federal Government, upon a recommendation of the State Bank, may provide temporary financing for—

- (a) contributing to the capital of the banking company or the bridge bank, whether in the form of share capital to take a controlling interest or debt that meets the conditions to qualify as regulatory capital as per the requirements specified by the State Bank;
- (b) paying consideration, if any, to acquire shares of the banking company under Resolution;
- (c) making of a loan, advance, or financing to the banking company or the bridge bank;
- (d) guaranteeing the assets and liabilities of the banking company or the bridge bank;
- (e) paying for any cost incurred on Resolution of a banking company or establishment and operationalization of a bridge bank and any other cost incidental thereto;

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(f) Paying for the compensation, if any, under sub-section (7) of section 42E; or

(g) any other financing as deemed necessary to support the orderly Resolution:

Provided that, actions referred to in clauses (c) and (d) can also be taken with respect to the transferee bank in the context of a scheme of amalgamation prepared under section 42G of this ordinance.

(2) No financing under sub-section (1) shall be provided by the Federal Government unless the following conditions are met:—

(a) the orderly and timely Resolution of the banking company is necessary for maintaining the stability of the financial system;

(b) the amount of funding available from the Deposit Protection Corporation to finance Resolution, as permitted under the Deposit Protection Corporation Act, 2016 (XXXVII of 2016), or any private sector funding would be insufficient, is not available within a reasonable timeframe;

(c) at a minimum, holders of all classes of share capital or any subordinated debt have absorbed or will absorb any losses that existed immediately before an order is made under section 42D; and

(d) the State Bank is of the opinion that the banking company or the bridge bank will become viable with the implementation of a restructuring plan to the satisfaction of the State Bank.

(3) Where the Federal Government becomes an owner of a controlling interest under sub-section (1), the banking company under Resolution or the bridge bank shall be managed on a commercial and professional basis and shall be subject to enhanced supervision by the State Bank. The concerned banking company or, or as the case may be, the bridge bank, shall develop a plan to the satisfaction of the State Bank and the Ministry of Finance for its exit from the public control within a reasonable timeframe.

(4) Any funding provided under sub-section (1), net of expected recoveries, and any related costs, shall be recouped within a reasonable time frame from the institutions for which the State Bank is the Resolution authority.

(5) The Federal Government may, in consultation with the State Bank, prescribe rules for provision of the temporary public funding and the recoupment of such funds from the institutions for which the State Bank is the Resolution authority, and procedures for the utilization of exit options in a fair and transparent manner having due regard to the timing, market conditions and confidentiality requirements.

26. Amendment of heading, Ordinance LVII of 1962.— In the said Ordinance, after section 43, in the heading, for the expression “PART-IIA”, the expression “PART-IID” shall be substituted.

27. Substitution of section 45, Ordinance LVII of 1962.— In the said Ordinance, for section 45, the following shall be substituted, namely—

“45. Restriction on stay order.— (1) The High Court may, on the application of a banking company which is temporarily unable to meet its obligations, make an order staying for a fixed period on such terms and conditions as it may think fit the commencement or continuance of all proceedings against the company and may from time to time extend the period, so that the total period shall not exceed six months:

Provided that no order of stay shall be granted by the High Court upon such application of a banking company unless it is accompanied by a report of the State Bank showing that in the opinion of the State Bank the banking company will be able to pay its debts if the application is granted.

(2) The registrar of the concerned High Court shall forward a copy of every stay order to the State Bank of Pakistan, made under sub-section (1) of this Section.

(3) When an application is made under sub-section (1), the High Court may appoint such a special officer of the banking company as recommended by the State Bank, who shall forthwith take into his custody or under his control all the assets, books, documents, effects and actionable claims to which the banking company is or appears to be entitled and shall also exercise such other powers as the High Court may deem fit to confer on him, having regard to the interests of the depositors of the banking company:

Provided that a special officer appointed under this sub-section shall carry out his functions under the direction and supervision of the State Bank, which direction and supervision shall be in accordance with the powers conferred on him by the High Court.

(4) Where the State Bank is satisfied that the affairs of a banking company in respect of which an order under sub-section (1) has been made, are being conducted in a manner detrimental to the stability of the financial system in Pakistan or the interests of the depositors, it may take a decision under section 42D and exercise any one or more of the Resolution powers provided under section 42E or make an application to the High Court for the winding up of the company, and where any such application is made, the High Court shall not make any order extending the period for which the commencement or continuance of all actions and proceedings against the company were stayed under that sub-section.

(5) The special officer appointed by the High Court under sub-section (3) of this section shall continue to hold office until he is removed from office, or until the bank resumes business, or until a liquidator is duly appointed to wind up the business of the bank."

28. Amendment of section 46, Ordinance LVII of 1962.— In the said Ordinance, in section 46, for sub-section(2), the following shall be substituted, namely:-

"(2) Notwithstanding anything contained in section 279 of the Companies Act, 2017 (XIX of 2017), where an application is made in respect of a compromise or arrangement between a banking company and its creditors or any class of them or between such company and its members or any class of them before a High Court, the High Court may direct the State Bank to make an inquiry in relation to the affairs of the banking company and the conduct of its directors and when such a direction is given, the State Bank shall make such inquiry and submit its report to the High Court."

29. Omission of section 47, Ordinance LVII of 1962.— In the said Ordinance, section 47 shall be omitted.

30. Amendment of section 49, Ordinance LVII of 1962.— In the said Ordinance, in Section 49,—

- (i) for sub-section (1), the following shall be substituted, namely—

“(1) Notwithstanding anything contained in section 279, section 301 and section 428 of the Companies Act, 2017 (XIX of 2017), but without prejudice to its powers under the sub-section (1) of section 45 or the State Bank’s powers under section 42E, the High Court shall order the winding up of a banking company—

(a) if the banking company is unable to pay its debts; or

(b) if an application for its winding up has been made by the State Bank under section 45, this section or section 59.

(ii) sub-section (2) shall be omitted;

(iii) in sub-section (3),—

(a) in clause (a), for sub-clause (iii), the following shall be substituted, namely:-

“(iii) has been prohibited from receiving fresh deposits by an order under sub-section (5) of section 26A; or”;

(b) after clause (a), amended as aforesaid, the following new clause (aa) shall be inserted, namely:-

“(aa) if an order has been made under section 42D and the State Bank has determined that it is appropriate that the banking company be wound up or part of the assets and liabilities of the banking company has been transferred to a transferee bank under section 42G or to a bridge bank under section 42H; or”;

(c) in clause (b), for sub-clause (iii), the following shall be substituted, namely:-

“(iii) the continuance of the banking company is prejudicial to the stability of the financial system in Pakistan or the interest of its depositors.”;

(iv) in sub-section (4), for the expression “163 of the Companies Ordinance, 1984 (XLVII of 1984)”, the

expression "302 of the Companies Act, 2017 (XIX of 2017)" shall be substituted; and

(v) in sub-section (6),—

- (a) for the expression "the Companies Ordinance, 1984 (XLVII of 1984)" the expression "the Companies Act, 2017 (XIX of 2017)" shall be substituted; and
- (b) for the full-stop at the end, a colon shall be substituted, and thereafter the following proviso shall be inserted, namely:-

"Provided that notification shall be made to the State Bank of a filing for a winding up or an order made to that effect in relation to a company that controls or owns a substantial interest in a banking company or a subsidiary of a company that controls a banking company, or of a banking company. The official liquidator appointed over such an entity shall be under obligation to avoid any action that may frustrate the achievement of the objectives provided under section 42B and shall be under duty to coordinate with the State Bank in this respect."

31. Substitution of section 51, Ordinance LVII of 1962.— In the said Ordinance, for section 51, the following shall be substituted, namely—

"51. State Bank to be official liquidator.— "(1) Notwithstanding anything contained in section 50, or in the Companies Act, 2017 (XIX of 2017), where the High Court has ordered the winding up of a banking company under section 49, the State Bank may apply for an order appointing the State Bank or any individual as the official liquidator of the banking company in that proceeding, and the High court shall grant the application for appointing the State Bank or such person as specified by the State Bank as liquidator. Where a person specified by the State Bank is appointed as liquidator, the remuneration of such liquidator shall be determined by the State Bank.

(2) Further, the High Court, on an application made by the State Bank for appointment of official liquidator, shall appoint such person as liquidator as specified by the State Bank in its application either to fill a vacancy, or to dismiss and replace a liquidator appointed under subsection (1).

(3) Subject to an order of the High Court, a liquidator appointed under sub-section (1) or sub-section (2) shall carry out its functions under the direction and supervision of the State Bank.

(4) Further, any liquidator appointed under sub-section (1) and sub-section (2), shall have the power to transfer the assets and liabilities of the banking company to protect the interest of depositors or maximize the value for all creditors as a whole.”.

32. Amendment of section 52, Ordinance LVII of 1962.— In the said Ordinance, in section 52, in sub-section (1),—

- (i) for the expression “the Companies Ordinance, 1984 (XLVII of 1984)”, the expression “the Companies Act, 2017 (XIX of 2017)” shall be substituted; and
- (ii) for the full stop, occurring at the end, a colon shall be substituted and thereafter the following new proviso shall be added, namely:-

“Provided that such a liquidator shall provide any assistance as the Deposit Protection Corporation may seek for the reimbursement of protected deposits and its other claims in a timely manner.”.

33. Amendment of section 58, Ordinance LVII of 1962.— In the said Ordinance, in section 58,—

- (i) for sub-section (2) and (3), the following shall be substituted, namely:-

“ (2) Subject to sub-section (3), there shall be paid within the period of ninety days as specified in sub-section (1), in the first place, to each eligible depositor of the banking company, a sum up to the amount prescribed by the Deposit Protection Corporation under section 7 of the Deposit Protection Corporation Act, 2016 (XXXVII of 2016) or the balance at his credit whichever is less and any other liabilities owed to the Deposit Protection Corporation under sub-sections (1) and (2) of section 22 of the Deposit Protection Corporation Act, 2016 (XXXVII of 2016).

(3) The total amount paid to each eligible depositor under sub-section (2) shall not exceed the amount prescribed by

the Corporation under section 7 of the Deposit Protection Corporation Act, 2016 (XXXVII of 2016)—

- (i) where a depositor is maintaining more than one deposit account with a banking company; and
 - (ii) in the case of joint account holders of a deposit account.”;
- (ii) in sub-section (4), after the word “every” occurring thrice, the word “eligible” shall be inserted;
- (iii) in sub-section (5),—
 - (A) after clause (a), the following new clause shall be inserted, namely:-

“(aa) after payments have been made to depositors in accordance with clause (a), secondly, for payment of Resolution funding support provided by the Federal Government under sub-section (1) of section 42I;”;
 - (B) for clauses (b) and (c), the following shall be substituted, namely:-
 - “(b) after payments have been made in accordance with clause (a) and (aa), thirdly, for payment on a pro rata basis to every claimant entitled to preferential payment under section 390 of the Companies Act, 2017 (XIX of 2017) or any other law for the time being in force;
 - (c) after payments have been made in full in accordance with clauses (a), (aa) and (b), fourthly, for payment on a pro rata basis of the debts of the general creditors;”;
 - (C) after clause (c), substituted as aforesaid, the following new clauses shall be added, namely:-
 - “(d) after payments have been made in full in accordance with clauses (a), (aa) and (b) and (c), fifthly, for payment on a pro rata basis of debts owed to subordinated creditors; and

- (e) after payments have been made in full in accordance with clauses (a), (aa), (b), (c) and (d), finally, for payment on a pro rata basis of equity to shareholders.”;
- (iv) in sub-section (6), for the expression “sub-section (1) of section 3A, leasing companies and modaraba companies”, the expression “section 3A and financial institutions as defined in clause 31 of sub-section(1) of section 2 of the Companies Act, 2017 (XIX of 2017)” shall be substituted;
- (v) in sub-section (10),—
 - (a) in clause (a), after the word “depositors”, the words “and the Deposit Protection Corporation” shall be added;
 - (b) after clause (b), the following new clause shall be inserted, namely;
 - “(bb) payments to Federal Government pursuant to clause (aa) of sub-section (5);”;
 - (c) in clause (c), the word “and” occurring at the end, shall be omitted;
 - (d) after clause (d), the following new clauses shall be added, namely:-
 - “(e) payments to the subordinated creditors pursuant to clause (d) of sub-section (5); and
 - (f) payments to the shareholders pursuant to clause (e) of sub-section (5).”;
- (vi) in sub-section (11), for the full stop at the end, a colon shall be substituted and thereafter the following new proviso shall be inserted, namely:-
 - “Provided that in the application of clause (e) of sub-section (10), sub-classes can be created based on the contractual terms contemplating payments to be made to some subordinated creditors after such other creditors.”;
 - and
- (vii) after sub-section (11) amended as aforesaid, the following new sub-section shall be inserted, namely:-

“(12) The provisions of this section shall also apply to a banking company under winding up that is not a member of the Deposit Protection Corporation and in its application to such a banking company, shall have effect as if the word “eligible” has been omitted from sub-sections (2), (3) and (4).”.

34. Amendment of section 59, Ordinance LVII of 1962.— In the said Ordinance, in section 59, for the expression “203 of the Companies Ordinance, 1984 (XLVII of 1984)”, the expression “347 of the Companies Act, 2017 (XIX of 2017)” shall be substituted and for the expression “218 and 220”, the expression “379 and 380” shall be substituted.

35. Amendment of section 82D, Ordinance LVII of 1962.— In the said Ordinance, in section 82D, for sub-section (2), the following shall be substituted, namely;

“(2) Prior to making a complaint, the complainant shall request the concerned banking company to redress the complainant’s grievances and if the banking company either fails to respond or makes a reply which is unsatisfactory to the complainant within a period of thirty days, the complainant may file a complaint at any time thereafter within a further period of thirty days:

Provided that the Banking Mohtasib may, if satisfied that there were grounds for the delay in filing the complaint, condone the delay and entertain the complaint.”.

36. Amendment of section 83, Ordinance LVII of 1962.— In the said Ordinance, in section 83,—

- (a) in sub-section (1), for the words “fine not exceeding five hundred thousand rupees” the words “penalty of an amount as specified in the Fourth Schedule” shall be substituted;
- (b) in sub-section (1A), for the words “fine not exceeding ten million rupees” the words “penalty of an amount as specified in the Fourth Schedule” shall be substituted;
- (c) in sub-section (1C), for the expression “fine not exceeding five million rupees, and, where the contravention is a continuing one, with a further fine which may extend to one hundred thousand rupees for every day during which such contravention continues”, the words “penalty of an amount as specified in the Fourth Schedule” shall be substituted;

- (d) in sub-section (2), for the expression "fine" occurring for first time, the word "penalty", and for the words "fine which may extend to one hundred thousand rupees for every day during which such contravention continues", the words "penalty of an amount as specified in the Fourth Schedule" shall be substituted;
- (e) in sub-section (3), for the expression "fine which may extend to two hundred thousand rupees in respect of each offence, and if he persists in such refusal, to further fine which may extend to twenty thousand rupees for every day during which the offence continues", the words "penalty of an amount as specified in the Fourth Schedule" shall be substituted;
- (f) in sub-section (4), for the expression "clause (a) of sub-section (6) of section 40", the expression "sub-section (5) of section 26A" shall be substituted;
- (g) for sub-section (5), the following shall be substituted namely:-

"(5) If any other provision of this Ordinance is contravened or circumvented, or if any default is made in complying with any requirement of this Ordinance or of any order, rule, regulation, instruction, circular, notification, guideline or direction made or condition imposed thereunder, every person who is knowingly a party to the contravention or default or circumvention shall be punishable with penalty of an amount as specified in the Fourth Schedule.";

- (h) after sub-section (5), substituted as aforesaid, the following new sub-sections shall be inserted namely:-

"(5A) where any person recklessly or deliberately engages in any unsafe or unsound practice, circumvention of supervisory instructions or deliberate breach of fiduciary duty causing knowingly a substantial loss to a banking company or a substantial pecuniary gain or other benefit to himself or to any other person, by reason of regulatory violation or circumvention, deviation from or breach of established banking practices, such person shall be liable to penalty of an amount as specified in the Fourth Schedule.

(5B) Any person aggrieved by imposition of a penalty under sub-sections (3), (4), (5) and (5A) may, within thirty days from the date of intimation of the penalty, prefer an appeal to such officer of the State Bank superior in rank to the officer by whom the decision appealed against was given as may be authorized in this behalf by the Governor State Bank and any order passed by such authorised officer after providing an opportunity of being heard shall be final.

Explanation.— For the purpose of this section, the term 'knowingly' shall have the same meaning as given under section 41D.”;

(i) in sub-section (6),—

(a) for the words “of a sum not exceeding such percentage as is five per cent above the bank rate” the expression “as determined by the State Bank from time to time in accordance with clause (a) and (b) below” shall be substituted; and

(b) in clause (b), for the colon at the end, a full stop shall be substituted and thereafter the existing proviso shall be omitted; and

(j) after sub-section (8), the following new sub-section shall be inserted, namely –

“(9) The Central Board of Directors of the State Bank may, alter or add to, the Fourth Schedule.”.

37. Amendment of section 84, Ordinance LVII of 1962.— In the said Ordinance, in section 84, in sub-section (1), for the expression “(1B), (1C) and (1D)”, the expression “(1AA), (1B), (1C), (1D) and (2)” shall be substituted.

38. Insertion of new section, Ordinance LVII of 1962.— In the said Ordinance, after section 93C, the following new section shall be inserted, namely –

"93CA. Co-operation with other authorities.— (1) Notwithstanding anything contained in any other law for the time being in force, the State Bank may enter into any agreement or memorandum of understanding or any reciprocal arrangement with other central banks, domestic or foreign regulatory, supervisory or Resolution authority for the purpose of sharing and obtaining public or non-public confidential information or cooperating and coordinating actions relevant to the supervisory and Resolution objectives as provided in this Ordinance, subject to such measures that the State Bank may consider 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 shall be carried out subject to the prior approval of the Federal Government.

(2) Subject to sub-section (1), the State Bank may, upon a request from the foreign Resolution authority, make an order that the effects of a Resolution measure taken by a foreign Resolution authority be fully or partially applicable to the banking company concerned:

Provided that, no such order shall be made, unless the State Bank is satisfied that—

- (i) in terms of its objective and anticipated results, the foreign measure is comparable to the exercise of Resolution powers under this Ordinance;
- (ii) the relevant foreign authority's laws allow for the recognition of State Bank's Resolution actions, if requested; and
- (iii) recognizing a foreign measure would contribute to the achievement of Resolution objectives under this Ordinance, or creditors of the bank or branch in Pakistan would be treated equitably under the foreign Resolution proceedings, or such recognition would have no fiscal implications in Pakistan, or not contravene the public policy of Pakistan."

39. Substitution of section 94, Ordinance LVII of 1962.— In the said Ordinance, for section 94, the following shall be substituted, namely:-

"94. Protection of action taken in good faith and indemnity.—(1) No suit, prosecution or other legal proceedings including for damages shall lie against the Federal Government, a Provincial Government, any officer of such Government, the State Bank, Board of Directors or a member thereof, Governor, Deputy Governors, member of any Board committee and officers and employees of the State Bank, 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 Ordinance 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 Governor, Deputy Governors, Directors, members of any Board committee, officers and employees of the State Bank 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 State Bank 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."

40. Insertion of Fourth Schedule, Ordinance LVII of 1962.— In the said Ordinance, after Third Schedule, the following new Schedule shall be added, namely:—

**"THE FOURTH SCHEDULE
THE BANKING COMPANIES ORDINANCE, 1962
[See Section 25(3), 83]**

Section	Limit of Penalty	Per day during which the default continues
25(3)	Upto Rs 200,000/-	Upto Rs 10,000
83(1)	Upto Rs 5,000,000/-	-
83(1A)	Upto Rs 100,000,000/-	-
83(1C)	Upto Rs 50,000,000/-	Upto Rs 100,000
83(2)	-	Upto Rs 1,000,000
83(3)	Upto Rs 2,000,000/-	Upto Rs 100,000
83(5)	Upto Rs 2,000,000/-	Upto Rs 100,000
83(5A)	For individual Upto Rs 20,000,000/-	Upto Rs 1,000,000
	For financial institution Upto Rs 20,000,000/- or Upto 0.5% of total	Upto Rs 1,000,000".

	assets of such institution whichever is higher	
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STATEMENT OF OBJECTS AND REASONS

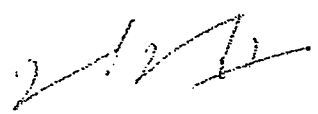
The Banking Companies Ordinance (BCO), 1962 provides a comprehensive legal framework for the banking industry in Pakistan. In the wake of dynamic nature of the banking sector, State Bank of Pakistan (SBP) continuously works to refine and update this important legislation to align it with international standards, best practices, and changing financial landscape.

One of the important areas which gained focus post Global Financial Crisis of 2007-08, is strengthening the resolution regime for institutions falling under SBP's regulatory regime. Accordingly, in order to ensure consistency with the international standards and best practices related to bank resolution, amendments are being proposed, which include: designating SBP as a resolution authority for the banking companies; setting out resolution objectives; clearly stating recovery triggers and powers; articulating resolution triggers along with necessary legal safeguards; enhancing resolution tool kit; providing for resolution funding; making liquidation process more efficient; cooperation and coordination with other regulators and supervisory authorities on resolution matters; protection of SBP and its officials for action taken in good faith and their indemnity; and bringing Microfinance Banks (MFBs) under the scope of BCO's resolution regime.

To provide explicit coverage to the legal framework for Islamic banking business in BCO, 1962, a separate chapter on Islamic banking has been drafted. These Islamic banking related amendments will not only strengthen the legal framework for Islamic banking but will also be the first step as per the Federal Shariat Court's directions and will pave the way towards interest free economy.

Some other amendments being proposed will strengthen SBP's regulatory capital regime, promote financial inclusion, facilitate convenient access to unclaimed deposits and relevant data to the general public; and make the process of filing complaints with the Banking Mohtasib simple and swift.

The Banking Companies Ordinance (Amendment Bill) 2023 is designed to achieve the aforementioned purposes.


Muhammad Aurangzeb
Minister for Finance and Revenue

