

[AS PASSED BY THE SENATE]

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**BILL**

*further to amend the Banking Companies Ordinance, 1962*

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

It is hereby enacted as follows: -

1. **Short title and commencement.**- (1) This Act may be called the Banking Companies (Amendment) Act, 2010.

(2) It shall come into force at once.

2. **Amendment of section 14, Ordinance LVII of 1962.**- In the Banking Companies Ordinance, 1962 (LVII of 1962), hereinafter referred to as the said Ordinance, in section 14, after sub-section (3), the following new sub-sections shall be added, 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 by such amount and within such period as may be specified in the order and the State Bank shall exercise the power reasonably, fairly and justly.

(5) Notwithstanding any provision contained in any other law for the time being in force:

(a) if the State Bank has determined that a person is holding or is a beneficial owner of five percent or more shares of a banking company without prior approval of the State Bank or a person that acquired shareholding with prior approval of the State Bank subsequently fails to meet the fit and proper test as the State Bank may, by an order in writing stating reasons, require such person to reduce, divest or transfer to a fit and proper person, his shareholding in the banking company within such reasonable period and in such manner as may be specified in the order;

- (b) where a person holding five percent or more shares of a banking company is or is likely to be detrimental to the interest of the banking company or its depositors, the State Bank may, by an order in writing stating reasons, require such person to divest his shareholding to a fit and proper person. State Bank shall exercise the power reasonably, fairly and justly; and
- (c) no order under clause (a) or clause (b) shall be made unless the person concerned has been given reasonable opportunity of making a representation to the State Bank against the proposed order;

If the State Bank is of 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, may make an appropriate interim order, and conduct the proceedings in a reasonably expeditious manner.

The interim order may include prohibition of,-

- (i) transfer of, or the carrying out of the agreement or arrangement to transfer such shares;
  - (ii) the exercise of voting rights in respect of such shares;
  - (iii) the payment of cash or stock dividends in respect of such shares; and
  - (iv) the issue of further shares to the concerned shareholder;
- (d) where direction given under clause (a) or clause (b) is not complied with, the State Bank may dispose of such shares either through stock exchange or public auction. The sale proceeds of such shares, after deduction of any expenses incurred by the State Bank, shall be paid to the respective shareholders within a period of three months. If necessary, the State Bank may require:-

- (i) issuance of duplicate shares in place of the original shares; and
  - (ii) the Central Depository Company to make appropriate changes in their records; and
- (e) any person aggrieved by the decision of the State Bank under clause (a), (b) and (d) may prefer appeal to the Central Board of Directors of the State Bank but pending decision of the proceedings, the shareholder shall not derive any benefit including dividends, right shares, voting rights, etc., from his shareholding without express permission of the Central Board.

*Explanation.*— The expression “beneficial ownership” shall include the explanation given in section 224 of the Companies Ordinance, 1984 (XLVII of 1984).”.

3. **Amendment of section 19, Ordinance LVII of 1962.**— In the said Ordinance, in section 19, after sub-section (3), the following new sub-sections shall be added, namely:—

“(4) If the State Bank is satisfied that conditions are not favourable for such payment, or the financial position of a banking company so warrants, it may, by order in writing stating reasons, restrict or prohibit any banking company from paying dividends to its shareholders for such period as may be specified in the order and the State Bank shall exercise the power reasonably, fairly and justly.

(5) No order shall be made unless the banking company concerned has been given an opportunity of making a representation to the State Bank and where 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.”.

4. **Amendment of section 26A, Ordinance LVII of 1962.**— In the said Ordinance, in section 26A, after sub-section (4), the following new sub-sections shall be added, namely:—

“(5) Where the State Bank has determined that a banking company,—

- (a) is carrying on its business in a manner detrimental to the interest of its depositors; or

- (b) is materially unable to discharge its financial obligations or continue its operations; or
- (c) has failed to meet prescribed capital requirements or cash and liquidity requirements or provisioning requirements or any condition specified in the license or any preventive or remedial measure prescribed by the State Bank,

the State Bank, by an order in writing stating reasons, may impose conditions or restrictions on the banking company on accepting deposits from any class of depositors or type of deposits for such period as may be specified in the order and the State Bank shall exercise the power reasonably, fairly and justly.

(6) No order shall be made unless the banking company concerned has been given an opportunity of making a representation to the State Bank 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, may make an appropriate interim order.”.

5. **Amendment of section 29, Ordinance LVII of 1962.**- In the said Ordinance, in section 29, after sub-section (3), the following new sub-section shall be added, namely:-

“(4) The cash deposited by a banking company or financial institution under sub-section (1) and by a scheduled bank under the State Bank of Pakistan Act, 1956 (XXXIII of 1956) shall be deemed to be part of the assets of the banking company but shall not be subject to any encumbrance, nor shall it be available for the discharge of any liability of the banking company or financial institution other than order of liquidation made by the High Court under this Ordinance, nor shall the said cash deposit be available to attachments in execution of any decree or recoverable under order of any authority under any law for the time being in force, except any claim of the State Bank.”.

6. **Amendment of section 42, Ordinance LVII of 1962.**- In the said Ordinance, in sub-section (1), in clause (d), in sub-clause (v), for the full stop, at the end, semicolon shall be substituted and thereafter the following new clause shall be added, namely:-

“(e) without prejudice to the generality of this section or any provision of this Ordinance-

- (1) if the State Bank is satisfied that one or more of the circumstances exist under which a banking company,-
  - (i) has become or is likely to become insolvent;
  - (ii) has suspended or is likely to suspend payments as these fall due;
  - (iii) has defaulted or is likely to default in making payments to depositors;
  - (iv) is carrying on its business in a manner detrimental to the interests of its depositors, creditors or other stakeholders;
  - (v) has contravened any provisions or any restrictions or condition imposed on its license;
  - (vi) has engaged any director, chief executive or an officer of a banking company who is or is likely to be detrimental to the interests of the banking company or its depositors or otherwise undesirable;
  - (vii) has created hindrance, delay or obstruction for the State Bank in performance of its supervisory functions;
  - (viii) has willfully destroyed, concealed or moved outside of Pakistan all or part of its assets, the administration, operation and books or records;
  - (ix) has failed to meet capital adequacy or minimum capital requirements prescribed by the State Bank;
  - (x) has defrauded its depositors and creditors;
  - (xi) is willfully engaged in or is being used for criminal activities;
  - (xii) is part of a financial group which is under liquidation, or in respect of which a custodian, receiver, administrator or liquidator has been appointed;

- (xiii) 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;
- (xiv) has breached requirements under any document of commitment to the State Bank; or
- (xv) 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,

the State Bank may, keeping in view the gravity of the situation and compliance behavior of the banking company, from time to time, invoke any one or more of the following actions, namely: -

- (i) require the banking company to submit a plan of action to redress any discrepancies;
- (ii) require the banking company or Board of Director of the banking company to furnish documents of commitment for compliance with the measures prescribed by the State Bank and to secure the interests of its depositors;
- (iii) where the banking company or the Board of Directors fail to provide documents of commitment or fulfil its obligation under the same pursuant to clause (ii), the State Bank may:
  - (a) take any action under section 41A, 41B or section 47; and
  - (b) 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 shares to such persons and at such consideration as may be determined by the State Bank. Any order passed by the State Bank under this sub-clause shall have effect notwithstanding the provisions contained in section 96 to 107 of Companies Ordinance, 1984 (XLVII of 1984) or any other law for the time being in force. The State Bank shall exercise the power reasonably, fairly and justly

- (1A) The State Bank shall provide an opportunity of being heard to the banking company or aggrieved person before making the 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 banking company or the aggrieved person shall have the right of appeal to the Central Board of Directors of the State Bank;

- (1B) Nothing contained in this section shall be read to dilute or affect powers of the State Bank otherwise conferred in the Ordinance.”.

#### **STATEMENT OF OBJECTS AND REASONS**

The recent financial crises worldwide have clear linkages with weak supervisory regime. The ever changing dimensions of banking business continue to create newer challenges and risks for bank depositors, regulators and financial system as a whole. Therefore, it is necessary to provide matching tools to bank regulators for corrective measures with the view to maintain financial stability. The proposed amendments in Banking Companies Ordinance, 1962 are in the context of strengthening necessary tools of bank regulation and supervision to safeguard against various risks. The amendments would enable State Bank of Pakistan to (i) change management in banks; (ii) impose losses on shareholders by writing down their capital; (iii) intervene and take control of banks; (iv) appoint administrators to manage banks; and (v) restructure banks when symptoms of crises are determined.

The existing law provides these powers in one form or other. However, there is a need to bring coherence and certainty of measures to deal with the troubled situations. This would ensure enhanced confidence in the system through stability and soundness of banking sector.

The Bill seeks to achieve the aforesaid objects.

**MR. SHAUKAT FAYAZ AHMED TARIN**  
*Member-in-Charge.*