

The Gazette  **of Pakistan**

**EXTRAORDINARY
PUBLISHED BY AUTHORITY**

ISLAMABAD, MONDAY, AUGUST 15, 2016

PART I

Acts, Ordinances, President's Orders and Regulations

NATIONAL ASSEMBLY SECRETARIAT

Islamabad, the 13th August, 2016

No. F. 22(36)/2015-Legis.—The following Acts of *Majlis-e-Shoora* (Parliament) received the assent of the President on the 12th August, 2016 and are hereby published for general information:—

ACT NO. XXXVII OF 2016

An Act to provide for the establishment of Deposit Protection Corporation as a subsidiary of the State Bank of Pakistan and for the management and control thereof

WHEREAS it is expedient to provide for the establishment, management and control of Deposit Protection Corporation as a subsidiary of the State Bank of Pakistan, for protection of small depositors in order to ensure financial stability of, and maintain public trust in, the financial system and for matters connected therewith or ancillary thereto;

It is hereby enacted as follows:—

741(1—28)

Price: Rs. 20.50

CHAPTER-I

PRELIMINARY

1. **Short title, extent and commencement.**—(1) This Act may be called the Deposit Protection Corporation Act, 2016.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

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

- (a) “banking company” has the same meaning as defined in section 5 of the Banking Companies Ordinance, 1962 (LVII of 1962);
- (b) “Board” means the Board of directors of the Corporation;
- (c) “Chairman” means the Chairman of the Board;
- (d) “Director” means a member of the Board;
- (e) “Corporation” means the Deposit Protection Corporation established under sub-section (1) of section 3;
- (f) “failed institution” means such member institution that has been notified by the State Bank under sub-section (1) of section 21;
- (g) “Governor” means the Governor of the State Bank and includes an Acting Governor;
- (h) “Managing Director” means the Managing Director appointed under section 12;
- (i) “member institution” means a banking company or a financial institution which is notified by the Corporation as a member institution and which is required to pay premium to the Corporation under the provisions of this Act;
- (j) “prescribed” means prescribed by rules or regulations made under this Act;
- (k) “protected deposit” means the deposit protected under section 7, subject to exceptions under section 8;

- (l) "regulations" means regulations made under this Act;
- (m) "rules" means rules made under this Act;
- (n) "seal" means the common seal of the Corporation; and
- (o) "State Bank" means the State Bank of Pakistan established under the State Bank of Pakistan Act, 1956 (XXXIII of 1956).

CHAPTER -II

ESTABLISHMENT AND OPERATION OF THE CORPORATION

3. **Establishment of the Corporation.**—(1) On the commencement of this Act, there shall be established a Corporation to be called Deposit Protection Corporation.

(2) The Corporation shall be a body corporate having perpetual succession and a seal and shall by the said name sue and be sued.

(3) The head office of the Corporation shall be situated in Karachi. It may shift the head office and establish offices in Pakistan with the prior approval, in writing, of the State Bank.

4. **Corporation to be a subsidiary of the State Bank.**—The Corporation shall be a subsidiary of the State Bank.

5. **Objective of the Corporation.**—(1) The objective of the Corporation is to compensate the depositors for losses incurred by them to the extent of protected deposits in the event of failure of a member institution as notified by the State Bank under sub-section (1) of section 21.

(2) All banks scheduled under sub-section (2) of section 37 of the State Bank of Pakistan Act, 1956 (XXXIII of 1956), unless exempted or excluded by the Board, shall compulsorily be member institutions of the Corporation and liable to pay the prescribed premium.

6. **Business and functions of the Corporation.**—The Corporation, under the overall supervision and control of the Board, may transact and carry on all or any of the following functions, namely:—

- (a) collect premiums and contributions from member institutions and others;
- (b) acquire, hold, manage and invest resources of the Corporation;

- (c) receive grants and borrow moneys;
- (d) assess and verify claims of the depositors made against the failed institution;
- (e) make or cause to be made payments to the depositors to the extent of protected deposits;
- (f) recover payments made on account of protected deposits from the assets of failed institutions;
- (g) incur any expenses concerning its functions;
- (h) enter into any contracts or other arrangements or any financial or other transactions;
- (i) issue guarantees and indemnities;
- (j) purchase, hold, manage, lease, encumber, transfer and dispose of any property and assets;
- (k) hire, employ or retain any person as an employee, agent or consultant on full time, temporary or on deputation basis and make necessary regulations for the terms and conditions of their service;
- (l) create awareness among general public and depositors about the deposit protection scheme as contained in this Act; and
- (m) carry on any business, discharge any functions and exercise powers as are necessary for, incidental to, or in connection with, affairs of the Corporation or any other act or deed deemed by the Board to be in the interest of the Corporation or for the advancement of the purposes of this Act.

7. Protected deposits.—(1) The Corporation shall guarantee full payment of funds held in depositor's accounts with a member institution, regardless of the number and size of the deposits, up to an amount prescribed by the Corporation from time to time.

(2) The above amount shall be inclusive of any interest accrued or return due as at the date of the notification of the State Bank under sub-section (1) of section 21.

(3) *Shariah* compliant mechanism of deposit protection in respect of Islamic banking institutions shall be provided in the prescribed manner which shall be approved by the State Bank's *Shariah* Board.

(4) Within ninety days of its commencement of business, the Corporation shall publish, in at least two daily newspapers having wide circulation, the guarantee amount as provided under sub-section (1). Any subsequent change in the guarantee amount shall be in same way published in two daily newspapers having wide circulation.

8. **Exceptions.** — (1) Protected deposits shall not cover the deposits of—

- (a) persons who have been granted preferential interest or return in deviation from the terms and conditions announced by a member institution which the member institution is obliged to apply to all its depositors of similar category;
- (b) members of the Board of Directors and senior management of a member institution including chief executive officer and key executives;
- (c) partners of auditing firms responsible to certify the member institutions' financial statements;
- (d) persons having acquired rights to a deposit after the issuance of the State Bank's notification under sub-section (1) of section 21;
- (e) spouse, dependent lineal ascendants and descendants and dependent brothers and sisters of the persons specified in clauses (b), (c) and (d);
- (f) any member institution whose deposits are in its name and on its account;
- (g) government or government institutions;
- (h) any company as defined under the Companies Ordinance, 1984 (XLVII of 1984); or
- (i) any other class of persons or institutions as specified by the Board from time to time:

Provided that where the Board specifically excludes any class of persons or institutions, such decision shall be published by the Corporation in two daily newspapers having wide circulation.

(2) Protected deposits shall not cover deposits arising out of or related to transactions or actions constituting 'money laundering' within the meaning of the Anti-Money Laundering Act, 2010 (VII of 2010), if the offender has been convicted of such offence.

9. Share capital and limited liability.—(1) The authorized share capital of the Corporation shall be one billion rupees or such other amount as the State Bank may, from time to time, determine by order in writing and shall be divided into shares of one million rupees each.

(2) The paid-up capital of the Corporation shall be such amount as may, from time to time, by order in writing be determined by the State Bank and contributed by the shareholders.

(3) The share capital may be divided into different kinds and classes as may be prescribed.

(4) The liability of shareholders of the Corporation shall be limited to the amount, if any, not fully paid-up on the shares held by them in the capital of the Corporation.

(5) No dividend shall be payable to the shareholders of the Corporation.

10. Board of directors.—(1) The general superintendence, direction and management of affairs and business of the Corporation and overall policy making in respect of its operations shall vest in the Board which may exercise all such powers and do all such acts, deeds and things that may be exercised or done by the Corporation.

(2) The Board shall consist of the following seven directors, namely:—

(a) a Deputy Governor of the State Bank as nominated by the State Bank;

(b) four directors to be appointed on nomination by the Federal Government in consultation with the State Bank, from among the persons who, from among the persons who have knowledge of banking, commerce, industry, economics, finance or law and neither of these directors shall be an officer of the Federal or a Provincial Government or of the State Bank or an employee or director or shareholder of the member institution;

(c) one director, an official of the Ministry of Finance, to be appointed on the recommendation of the Federal Government; and

(d) the Managing Director.

(3) The directors appointed under clause (b) of sub-section (2) shall hold office for a term of three years and shall be eligible for re-appointment for an additional term of three years on the basis of their performance in the first term.

(4) The meetings of the Board shall be held at such times and places as may be prescribed or, until so prescribed, as and when convened by the Chairman.

(5) The directors shall be paid by the Corporation such fees and allowances for attending meetings of the Board or of any of its committees and for attending any other work of the Corporation as may be prescribed.

(6) No act or proceedings of the Board shall be invalid merely on the ground of existence of any vacancy in, or defect in the constitution of, the Board.

(7) The quorum of meetings of the Board shall be as may be prescribed or, until so prescribed, shall be three directors.

(8) All decisions of the Board shall be taken by majority of the directors present and voting at a meeting duly convened and held and in the event of an equality of votes the Chairman may exercise a casting vote.

(9) A resolution in writing signed by all directors shall be as effective as if such resolution had been passed at a meeting of the Board.

(10) Till such time the Board is constituted or three months of the commencement of this Act, whichever is earlier, all powers of the Board shall vest in the State Bank.

11. **Chairman.**—(1) The Deputy Governor of the State Bank shall be the Chairman of the Board.

(2) The Chairman shall, whenever present, preside over meetings of the Board. In absence of the Chairman, the directors present shall choose one of them to be the Chairman for such meeting.

12. **Managing Director.**—(1) The State Bank shall appoint a professional person, who has significant experience in banking, finance, accountancy, business administration or public administration, as Managing Director of the Corporation for

a term of five years and he shall be eligible for re-appointment for another term of five years on the basis of his performance in the first term:

Provided that the Managing Director may delegate his powers, by general or special order in writing, to senior executive of the Corporation for managing day- to- day affairs during his leave period or absence from Pakistan:

Provided further that if the office of Managing Director is vacant, the State Bank may appoint any of its senior executives as acting Managing Director for a period not exceeding three months.

(2) The Managing Director shall be the chief executive officer of the Corporation and shall, subject to the control and direction of the Board, administer affairs of the Corporation and shall have such powers for this purpose as are from time to time delegated to him by the Board.

(3) The salary and other terms and conditions of service of the Managing Director shall be such as the Board may determine except that neither the salary of the Managing Director nor his other terms and conditions of service shall be varied to his disadvantage after his appointment.

(4) The Managing Director shall devote his full time and attention to affairs of the Corporation, provided that the Managing Director may, in addition to his duties as the Managing Director, be entrusted with such other duties for such period as the Board may, by order in writing, determine.

13. **Disqualifications of the directors.**—No person shall be appointed or hold office as director who—

- (a) is a member of the Senate, National Assembly, any Provincial Assembly or an elected member of a local council or local body constituted under any law relating to local councils or local bodies;
- (b) is a director, officer or employee of any banking company or financial institution or has an interest as a shareholder in a banking company or financial institution:

Provided that nothing in this clause shall apply where the director is in the employment of the, State Bank or its subsidiaries or where the director is, in addition to holding the office of director, entrusted with additional duties by the Board or State Bank:

- (c) has been convicted of tax evasion under any law or has been convicted or proceedings are pending against him under section 412 of the Companies Ordinance, 1984 (XLVII of 1984) or section 83 of the Banking Companies Ordinance, 1962 (LVII of 1962) or has been convicted by a court of law for an offence involving moral turpitude;
- (d) has been deprived of the right to hold a position of financial responsibility;
- (e) is in default of payments due from him to any banking company, financial institution, cooperative society, Government department, Government controlled or managed company or corporation and for the purpose of this clause, default in payment by the spouse, dependent children and companies, firms and other business concerns under the control or management of a person shall be considered as the default of such person; or
- (f) holds an office in a political party.

14. **Removal of a director.**—A director or the Managing Director may be removed by the State Bank by an order in writing where it is established that—

- (a) any of the circumstances referred to in section 13 is applicable;
- (b) he has become physically or mentally incapable of carrying out his responsibilities for a continuous period of six months or more;
- (c) he has been engaged in a serious misconduct;
- (d) his activities impair the Corporation's interests;
- (e) he has been absent from three or more successive meetings of the Board without reasonable ground; or
- (f) otherwise the State Bank considers him to be unfit to be a director or, as the case may be, Managing Director.

15. **Disclosure of interest.**—(1) Every director and employee of the Corporation shall disclose in writing to the Board any commercial, financial or other business interest which he or his family members may have, whether directly or indirectly, and which may have adverse implications for the Corporation's interest.

(2) In performing their obligations, the persons under sub-section (1) shall be bound to place the Corporation's interests before their own interests.

(3) Directors shall not participate in any discussion and shall restrain from voting on the issues in which their commercial, financial or other business interest, or those of their families, is involved.

16. Committees of directors. —(1) The Board may constitute one or more committees consisting of such number of directors as it may determine.

(2) The powers, functions, duties and other terms of appointment of a committee of directors shall be such as the Board may determine.

(3) The members of a committee of directors shall hold office for such period as the Board may determine.

(4) The minutes of every meeting of a committee of directors shall be presented before the Board at its next meeting following the meeting of the committee.

(5) Subject to general and any special directions of the Board, a committee of directors shall deal with any matter entrusted to it by the Board.

17. Corporation's resources. — (1) The sources of the Corporation's resources shall, among others, consist of the following, namely: —

- (a) the paid-up share capital;
- (b) initial premiums from member institutions;
- (c) periodic premiums from member institutions;
- (d) return on the investments;
- (e) proceeds received from a member institution's property in case of sale or liquidation; or
- (f) other sources including loans, donations, grants and foreign assistance etc.

18. Financing the Corporation in shortfall of resources. — (1) If at any time, resources of the Corporation fall short of its liabilities under this Act, such shortfall may be covered in one of the following ways, namely:—

- (a) requiring member institutions to pay advance premium;
- (b) increasing the premium;

- (c) drawing loans in accordance with the terms and conditions prescribed by the Board; and
- (d) allocations from the Federal Government.

(2) The amount paid in advance under clause (a) of sub-section (1) shall be adjusted against future premiums.

(3) The maximum amount of the increased premium contribution under clause (b) of sub-section (1) may not exceed such percentage of the deposit base as prescribed by the Board.

(4) Loans drawn by the Corporation may be secured by a guarantee issued by the Federal Government, State Bank or by Corporation's assets, including Corporation's future claims on member institutions for premium contributions.

19. Investments made and accounts maintained by the Corporation. —

(1) The Corporation may invest in—

- (a) Government securities issued or securities guaranteed by the Government; or
- (b) any other investment avenue as approved by the Board:

Provided that the Corporation shall formulate an investment policy within ninety days of its commencement of business. The investment policy shall be designed keeping in view objectives of the Corporation and in line with underlying factors like risks and liquidity.

(2) The Corporation shall open and maintain account with SBP Banking Services Corporation or with any other financial institution with prior approval of the Board.

20. Determining size of deposits.—(1) The total amount of a member institution's liability to a depositor shall be determined by adding up all the depositor's deposits, including interest accrued or return due as at the date of notification under sub-section (1) of section 21. In establishing the member institution's total liability to a depositor, foreign currency deposits shall be taken at equivalent amount at the exchange rate declared by the State Bank at the date of the State Bank's notification under sub-section (1) of section 21.

(2) In the event of a joint deposit, each person's portion shall be taken into account in establishing the total amount of that person's deposits held by a member institution. If it is not otherwise provided for in the deposit contract, it shall be assumed that the depositors' portions are equal.

(3) In the event of a deposit contract in favour of a third party, the person in whose favour the deposit has been opened (the beneficiary) shall be entitled to receive a payment from the Corporation unless it is otherwise provided for in the contract. If there is more than one beneficiary, the joint depositor rule as provided in sub-section (2) shall apply.

(4) A deposit which is encumbered or serves as collateral shall be included in the adding up under sub-section (1) and the amount due on the deposit shall not be paid to the titleholder of the deposit until the said encumbrance or security has been lifted. Where an order issued by a court in respect of such deposit is effective, the Corporation shall pay the amount due on the deposit to the person who is designated in the order as the person authorized to receive the deposit amount.

21. Terms and procedures for reimbursement of protected deposits.—(1) The State Bank shall, by a notification, declare a member institution as a failed institution on the occurrence of any of the following events, namely:—

- (a) if it has been prohibited from receiving fresh deposits; or
- (b) if it has been informed by notice in writing by the State Bank that its licence has been cancelled under section 27(4) of the Banking Companies Ordinance, 1962 (LVII of 1962) or that a licence under that section cannot be granted to it; or
- (c) if it has been ordered to be wound up; or
- (d) if it has transferred all its deposit liabilities in Pakistan to any other institution; or
- (e) if it has ceased to be a member institution due to any significant judicial and regulatory actions that cancels the licence of the financial institution; or
- (f) if in respect of it any scheme of compromise or arrangement or of reconstruction has been sanctioned by any competent authority and the said scheme does not permit the acceptance of fresh deposits; or
- (g) if it has been amalgamated with any other banking institution.

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

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

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

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

(6) Payments from the Corporation to the protected depositors shall begin as early as possible from the date of the notification under sub-section (1). The Corporation shall ensure that payments to most of the protected depositors are made or tendered within seven working days and that all payments are made or tendered within thirty days at the latest, if there is no dispute as to the entitlement to, or ownership of, the deposit.

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

(8) A member institution's liability to its depositors shall be reduced proportionally by the amounts paid by the Corporation to depositors and shall be replaced by an equivalent liability to the Corporation.

(9) The Corporation shall regularly notify the liquidator or the assignee in bankruptcy of the failed institution about the amount paid by the Corporation to any depositor.

22. Priority of payment.—(1) Notwithstanding anything contained in the Companies Ordinance, 1984 (XLVII of 1984), the Banking Companies Ordinance 1962 (LVII of 1962) and any other law in respect of insolvency or liquidation or tax, the claim of the Corporation against the failed institution to the extent of protected deposit paid or to be paid and any arrears of outstanding premium shall have priority to all other claims.

(2) For the avoidance of doubt, it is clarified that payment to the depositors, to the extent of protected amount, of a failed institution against whom winding up order is passed shall be made only through the Corporation, and the Corporation shall also have priority rights of the protected depositors as provided under section 58 of the Banking Companies Ordinance, 1962 (LVII of 1962).

23. Delegation of powers and appointment of attorneys.—(1) The Board may, for the purpose of ensuring smooth and efficient functioning of the Corporation and facilitating transactions of its daily business, by resolution, delegate

to the Managing Director or any other executive of the Corporation, subject to such conditions and limitations, if any, as may be specified therein, such of its powers and duties under this Act as it may deem necessary.

(2) The Board may, from time to time, by resolution appoint any company, firm or person to be the attorney of the Corporation for such purposes and with such powers, authorities and discretions, not exceeding those vested in or exercisable by the Board under this Act and for such period and subject to such conditions as the Board may think fit, and any such resolution may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Board may think fit.

24. Accounts and audit.—(1) The accounting year of the Corporation shall commence on the first day of July and end on the thirtieth day of June.

(2) The Corporation shall maintain proper accounts and other records to reflect true and fair view of its state of affairs and prepare annual statement of accounts, including the profit and loss accounts and statement of financial position.

(3) The accounts of the Corporation shall be audited by one or more auditors who shall be chartered accountants within the meaning of the Chartered Accountants Ordinance, 1961 (X of 1961), to be appointed by the Board.

(4) Every auditor shall be supplied with a copy of the annual statement of accounts and it shall be the duty of the auditor to examine the same together with the accounts and vouchers relating thereto and every auditor shall have a list delivered to him of all books kept by the Corporation and shall, at all reasonable times, have access to books, accounts and other documents of the Corporation and may employ accountants or other persons to assist him in auditing such accounts and may, in relation to such accounts, examine the Managing Director, directors and executives of the Corporation.

(5) The auditors shall submit a report to the Board regarding the annual statement of accounts and in any such report they shall state whether in their opinion the statement of accounts is a full and fair statement of accounts containing all necessary particulars and is properly drawn up so as to exhibit a true and correct view of the state of affairs of the Corporation and, in case they have called for any explanation or information from the Managing Director or the Board, whether it has been given and whether it is satisfactory.

(6) The Board may, in addition to the audit under sub-sections (3) and (4), cause to be carried out internal audit of the Corporation's accounts and the internal auditors' reports shall be submitted to the Board.

25. Power of the State Bank to give directions.—(1) In order to protect interest of small depositors or ensure financial stability, where the State Bank is satisfied that,—

- (a) in the public interest; or
- (b) to prevent affairs of the Corporation being conducted in a manner detrimental to the interests of its beneficiaries or in a manner prejudicial to interests of the Corporation or of the State Bank; or
- (c) to secure proper management of the Corporation generally or to further the objectives of this Act,

it is necessary to issue directions to the Corporation, the State Bank may, from time to time, issue such directions as it may deem fit and the Corporation shall be bound to comply with such directions.

(2) If any provision of this Act is contravened or if any default is made in complying with any requirement of this Act or of any rule or regulation, direction made or condition imposed there under, the State Bank may, on a complaint made in writing by the Corporation, or on its own motion, impose on the member institution and any other person who is knowingly a party to such contravention or default, a fine which may extend to two hundred thousand Rupees, and where a contravention or default is a continuing one, a further fine may be imposed which may extend to ten thousand Rupees for every day during which such contravention or default continues.

(3) The State Bank may recover the amount of any outstanding premium or fine from a member institution by debiting its account maintained with the SBP Banking Services Corporation.

(4) Any member institution or other person aggrieved by imposition of the fine under this section may, within twenty - one days from the date on which such decision is communicated to it, apply for review to the State Bank.

(5) Any dispute as to the amount of premium due from any member institution shall be decided by the State Bank and the decision of the State Bank shall be final.

CHAPTER - III

MISCELLANEOUS

26. Duty of officers and servants to maintain secrecy. - (1) Except in performance of his duties under this Act, every executive or other employee of the Corporation shall preserve and aid in preserving secrecy with regard to all matters relating to affairs of the Corporation and of the State Bank coming to his knowledge and not published by the Corporation or by the State Bank and with regard to all matters relating to financial or monetary affairs of any institution, person, body of persons, any Government or authority whether in Pakistan or outside Pakistan that may come to his knowledge in performance of his duties.

(2) Every such executive or other employee who communicates any such matter, except when required by law so to do, or in discharge of his duties as such, shall be guilty of an offence punishable with imprisonment of either description for a term which may extend to three years, or with fine which may extend to one hundred thousand Rupees, or with both.

(3) No court shall take cognizance of any offence punishable under this section except upon a complaint in writing by a person authorized in this behalf by the Board.

27. Officers to be public officers. —(1) For the purposes of Article 7 of the *Qanun-e-Shahadat* 1984 (P.O. No. 10 of 1984), the provisions of Part IV of the Code of Civil Procedure, 1908 (Act V of 1908), and the provisions of rule 27 of Order V, and rule 52 of Order XXI of the said Code any person in service of the Corporation acting in his capacity as such shall be deemed to be a public officer.

(2) The provisions of Article 6 of the *Qanun-e-Shahadat*, 1984 (P. O. No. 10 of 1984), shall apply to the unpublished records of the Corporation and the Managing Director shall be deemed to be the officer or head of the department concerned.

28. Persons in service of the Corporation to be public servants.— Every person in service of the Corporation shall be deemed to be a public servant within the meaning of section 21 of the Pakistan Penal Code (Act XLV of 1860).

29. Production of unpublished records of the Corporation, etc.— (1) No court, tribunal or other authority shall be entitled to compel the Corporation or any person in service of the Corporation to produce or, as the case may be, give any evidence derived from, any unpublished records of the Corporation.

(2) No court, tribunal or other authority shall permit any one to produce or give evidence derived from, any unpublished records of the Corporation, except with the prior permission in writing of the Managing Director who may give or withhold such permission as he thinks fit.

(3) Notwithstanding anything contained in this Act or any other law for the time being in force, a report prepared by the Corporation on a member institution under any law for the time being in force shall be deemed to be unpublished for the purposes of sub-sections (1) and (2) even if a copy of such report has been supplied to the member institution to which the report pertains, the State Bank or the Federal Government.

30. Pension, gratuity, provident fund and other employment benefits of Corporation's employees to be exempt from attachments, etc.—Notwithstanding anything contained in any law for the time being in force, pensions, gratuity or provident fund and other employment benefits granted by the Corporation to its executives and other employees shall not be liable to seizure, attachment or sequestration by process of any court at the instance of a creditor, for any demand against the pensioner or in satisfaction of a decree or order of any such court.

31. Exemption from taxes.—Notwithstanding anything contained in the Wealth Tax Act, 1963 (XV of 1963), the Income Tax Ordinance, 2001 (XLIX of 2001), the Stamp Act, 1899 (II of 1899) or any other law for the time being in force relating to wealth tax, income tax, super tax or any other tax, the Corporation shall not be liable to pay any wealth tax, income tax or super tax.

32. Power to make rules.—The State Bank may, with approval of the Federal Government and by notification in the official Gazette, make rules, consistent with the provisions of this Act, for carrying out the purposes of this Act.

33. Power to make regulations.—(1)The Board may make regulations, not inconsistent with the provisions of this Act and the rules made thereunder, to provide for all matters for which provision is necessary or convenient for the purpose of giving effect to the provisions of this Act.

(2) Where any provision of the regulations is inconsistent with any provision of the rules, the provision of the rules shall prevail.

(3) Where the State Bank considers it expedient so to do, it may by order in writing, direct the Board to make any regulations or to amend or rescind any regulations already made, within such period as it may specify in this behalf.

(4) If the Board fails to comply with any direction of the State Bank under sub-section (3) within the specified period, the State Bank may make, amend or rescind any regulation directed by the State Bank to be made, amended or rescinded, and a regulation so made, amended or rescinded by the State Bank shall be deemed to have been made, amended or rescinded by the Board in accordance with the provisions of this section and shall have effect accordingly.

34. Power to call information.—(1) The Corporation may call for any record or information from any member institution as it may deem necessary for discharging its functions under this Act.

(2) The Corporation shall report to the State Bank in case any member institution fails to provide information or record required under sub-section (1) or comply with any provisions of this Act or any rules or regulations made under this Act and the State Bank may take any action corrective, penal or remedial against such member institution as it may deem appropriate keeping in view the nature and extent of failure.

35. Protection of action taken in good faith.—No suit or other legal proceedings shall lie against the Corporation or the State Bank or any director or officer of the Corporation or the State Bank for anything done or intended to be done in pursuance of this Act or of any rules, regulations or orders made there under unless done in bad faith.

36. Liquidation of the Corporation.—(1) The Corporation shall not be placed in liquidation save by order of the State Bank and in such manner as the State Bank may direct.

(2) On the liquidation of the Corporation,—

(a) the outstanding assets of the Corporation shall be distributed among the member institutions in such manner and in such proportion as may be determined by the State Bank having regard to the amounts of premium paid by them during any prescribed period or the deposits of the said banks as on the date of liquidation of the Corporation or other relevant circumstances; and

(b) the remaining outstanding assets of the Corporation shall be transferred to the State Bank.

37. Act to override.—Except the application of any provision of the Act to the Corporation as a subsidiary of the State Bank, this Act shall have effect notwithstanding anything contained in any law for the time being in force or in any agreement, contract, or other applicable documents or instrument.

38. **Removal of difficulties.** - If any difficulty arises in giving effect to any of the provisions of this Act, the State Bank may make such order not inconsistent with the provisions of this Act, as may appear to it to be necessary for the purposes of removing the difficulty:

Provided that aforesaid power shall cease to exist on expiry of two years, from the commencement of this Act.

39. **Removal of deposit protection under the Banks (Nationalization) Act, 1974 (XIX of 1974).**—Sub-section (4) of section 5 of the Banks (Nationalization) Act, 1974 (XIX of 1974) shall not be applicable to any member institution.

ACT NO. XXXVIII OF 2016

An Act further to amend the Financial Institutions (Recovery of Finances) Ordinance, 2001

WHEREAS it is expedient further to amend the Financial Institutions (Recovery of Finances) Ordinance, 2001 (XLVI of 2001) for the purposes hereinafter appearing;

It is hereby enacted as follows:—

1. **Short title and commencement.**—(1) This Act may be called the Financial Institutions (Recovery of Finances) (Amendment) Act, 2016.

(2) It shall come into force at once.

2. **Amendment of section 2, Ordinance XLVI of 2001.**—In the Financial Institutions (Recovery of Finances) Ordinance, 2001 (XLVI of 2001), hereinafter referred to as the said Ordinance, in section 2,—

- (a) in clause (b), in sub-clause (i), for the word “fifty” the word “hundred” shall be substituted;
- (b) in clause (c), after the words “financial institution”, occurring for the first time, the words “within or outside Pakistan” shall be inserted;
- (c) in clause (d), after sub-clause (vi), the existing two un-numbered sub-clauses shall be numbered as sub-clauses (vii) and (ix) respectively and after sub-clause (vii), numbered as aforesaid, the following new sub-clause shall be inserted, namely:—

“(viii) any amount of loan or facility availed by a person from a financial institution outside Pakistan who is for the time being resident in Pakistan;”;

(d) after clause (f), the following new clause shall be added, namely:—

“(g) “willful default” means

- (i) deliberate or intentional failure to repay any finance, loan, advance or any financial assistance received by any person from a financial institution after such payment has become due under the terms of any law or an agreement, rules or regulations issued by the State Bank of Pakistan;
- (ii) utilization of finance, loan, advance or financial assistance or a substantial part thereof, obtained by any person from a financial institution for a purpose other than that for which such finance, loan, advance or financial assistance had been obtained and payment in part or full not made to the financial institution; or
- (iii) removal, transfer, misappropriation or sale of any assets collateralized to secure a finance, loan, advance or financial assistance obtained from a financial institution without permission of such institution.”.

3. **Amendment of section 5, Ordinance XLVI of 2001.**—In the said Ordinance, in section 5,—

(a) for sub-section (4), the following shall be substituted, namely:—

“(4) A Judge of a Banking Court shall be appointed by the Federal Government after consultation with the Chief Justice of the High Court of the Province in which the Banking Court is established and no person shall be qualified for appointment as the Judge of a Banking Court unless he is, or has been, or is qualified to be a District Judge.”; and

(b) after sub-section (9), the following new sub-section shall be added, namely —

“(10) A Judge of a Banking Court shall submit to the Chief Justice of the High Court of the Province in which the Banking Court is established, reports on a quarterly basis regarding the number of cases filed, heard and disposed of by the Banking Court during each relevant quarterly period.”.

4. **Amendment of section 8, Ordinance XLVI of 2001.**—In the said Ordinance, in section 8, for sub-section (1), the following shall be substituted, namely:—

“(1) Subject to sub-section (2) and notwithstanding anything contained in the Limitation Act, 1908 (IX of 1908) or any other law, a financial institution may, within five years, file a suit for the recovery of any amount written-off, released or adjusted under any agreement, contract, or consent, including a compromise or withdrawal of any suit or legal proceedings or adjustment of a decree between a financial institution and a customer, if it has reasons to believe that the amount was written-off, released or adjusted for political reasons or considerations other than *bona fide* business considerations.”.

5. **Amendment of section 10, Ordinance XLVI of 2001.**—In the said Ordinance, in section 10, after sub-section (4), the following new sub-section (5) shall be inserted and the existing sub-sections (5) to (12) shall respectively be re-numbered as sub-sections (6) to (13), namely:—

“(5) Where application for leave to defend submitted under the preceding sub-section is found to be materially incorrect at any stage of the proceedings, the defendant shall lose the right to defence and shall also be liable to pay penalty of not less than five percent of the amount of the claim, unless the defendant can establish that incorrect information was submitted as a result of a *bona fide* mistake.”.

6. **Amendment of section 11, Ordinance XLVI of 2001.**—In the said Ordinance, in section 11, for sub-section (1), the following shall be substituted, namely:—

“(1) If the Banking Court on consideration of affidavit under oath by the customer supported by certificate of a chartered accountant on the approved panel of auditors of the State Bank of Pakistan under section 35 of the Banking Companies Ordinance, 1962 (LVII of 1962) is of the opinion that the dispute between the parties does not extend to the whole of the claim or that part of the claim is either undisputed or is clearly due or that the dispute is mainly limited to a part of the principal amount of the finance or to any other amounts relating to the finance, it shall, while granting leave and framing issues with respect to the disputed amounts, pass an interim decree in respect of that part of the claim which relates to the principal amount and which appears to be payable by the defendant to the plaintiff.”.

7. **Amendment of section 12, Ordinance XLVI of 2001.**—In the said Ordinance, in section 12,—

- (a) after the word “served”, occurring for the second time, the words “nor published in newspapers” shall be inserted; and
- (b) for the words “or otherwise as it thinks fit” the words “which shall not be less than one third of the amount of the decree”, shall be substituted.

8. **Substitution of section 15, Ordinance XLVI of 2001.**—In the said Ordinance, for section 15, the following shall be substituted, namely:—

“15. **Sale of mortgaged property.**—(1) In this section, unless there is anything repugnant in the subject or context,—

- (a) “mortgage” means the transfer of an interest in specific immovable property for the purpose of securing the payment of the mortgage money or the performance of an obligation which may give rise to a pecuniary liability;
- (b) “mortgage money” means any finance or other amounts relating to a finance, penalties, damages, charges or pecuniary liabilities, payment of which is secured for the time being by the document by which the mortgage is effected or evidenced, including any mortgage deed or memorandum of deposit of title deeds;
- (c) “mortgaged property” means immovable property mortgaged to a financial institution; and
- (d) “reserve price” means forced sale value of the mortgaged property determined by a reputable valuation company under clause (a) of sub-section (4).

(2) In case of default in payment by a customer, the financial institution may send a notice to the mortgagor demanding payment of the mortgage money outstanding within fourteen days from service of the notice and failing payment of the amount within due date, it shall send a second notice of demand for payment of the amount within fourteen days. In case the customer on the due date given in the second notice sent, continues to default in payment, financial institution shall serve a final notice on the mortgagor demanding the payment of the mortgage money outstanding within thirty days from service of the final notice on the customer.

(3) When a financial institution serves a final notice of demand, all powers of the mortgagor in regard to recovery of rents and profits from the mortgaged property shall stand transferred to the financial institution until such notice is withdrawn and it shall be the duty of the mortgagor to pay all rents and profits from the mortgaged property to the financial institution:

Provided that where the mortgaged property is in possession of any tenant or occupier, other than the mortgagor, it shall be the duty of such tenant or occupier, on receipt of notice in this behalf from the financial institution, to pay to the financial institution the rent or lease money or other consideration agreed with the mortgagor.

(4) Where a mortgagor fails to pay the amount as demanded within the period prescribed under sub-section (2) and after the due date given in the final notice has expired, the financial institution may, without the intervention of any court and subject to any rules made by the Federal Government under sub-section (5), sell the mortgaged property or any part thereof by public auction and apply the proceeds thereof towards total or partial satisfaction of the outstanding mortgage money in the following manner, namely:—

- (a) the financial institution shall have the mortgaged property evaluated by a reputable valuation company on the panel of the Pakistan Banks Association as on the date of the final notice sent to the mortgagor under sub-section (2);
- (b) the financial institution shall cause to be published a notice in one reputable English daily newspaper with wide circulation and one reputable Urdu daily newspaper with wide circulation in the Province in which the mortgaged property is situated specifying the following, namely:—
 - (i) detailed particulars of the mortgaged property;
 - (ii) name and address of the mortgagor;
 - (iii) amount of the outstanding mortgage;
 - (iv) any encumbrances which the mortgaged property may be subject to which the financial institution is aware of;
 - (v) the financial institution's intention to sell the mortgaged property through a public auction;

- (vi) the reserve price below which the mortgaged property cannot be sold;
 - (vii) the time and place at which the public auction is to take place, provided that the public auction shall take place in the city where the mortgaged property is located; and
 - (viii) any other information, which may be relevant:
- (c) the financial institution shall send a notice with the information, specified in clause (b), to the mortgagor and to all persons who, to the knowledge of the financial institution, have an interest in the mortgaged property as mortgagees; and
- (d) the public auction for the sale of the mortgaged property shall not take place before the expiration of three business days of the publication of the notice as required under clause (c).

(5) In addition to its powers under sections 25 and 26, the Federal Government may, by notification in the official Gazette, make rules specifying the mode, conduct or method of sale of the mortgaged property and in addition to the conditions stipulated in sub-section (4).

(6) The financial institution shall be entitled, in its discretion, to participate in the public auction and to purchase the mortgaged property for an amount ten percent higher than the highest bid obtained in the public auction, provided that where the financial institution chooses to purchase the mortgaged property at the highest bid obtained in the public auction, it shall issue notice to the mortgagor who shall have three business days from the service of the notice to match the financial institution's bid. If the mortgagor is able to match the financial institution's bid, he shall be allowed to purchase the mortgaged property.

(7) Where the mortgagor or his agent or servant or any person put in possession by the mortgagor or on account of the mortgagor does not voluntarily give possession of the mortgaged property sought to be sold or sought to be purchased or purchased by the financial institution, a Banking Court on application of the financial institution or purchaser shall put the financial institution or purchaser, as the case may be, in possession of the mortgaged property in any manner deemed fit by it:

Provided that the Banking Court may not order eviction of a person who is in occupation of the mortgaged property or any part thereof under a *bona fide* lease, except on expiry of the period of the lease, or on payment of such compensation as may be agreed between the parties or as may be determined by the Banking Court to be reasonable