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ISLAMABAD, MONDAY, JUNE 2, 1997

PART I

Acts, Ordinances, President's Orders and Regulations

SENATE SECRETARIAT

Islamabad, the 2nd June, 1997

No. EB 9(19)/97-Legis. —The following Acts of Majlis-e-Shoora

(Parliament) received the assent of the President on the 31st May, 1997, are hereby published for general information :—

Act No. XIV oF 1997

An 'Act further to amend the Banking Companies Ordinance, 1962 °

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

It is hereby enacted as follows :—

1. Short title and-commencement.—(1) This Act may fe called the Banking Companies (Amendment) Act, 1997.

(2) It shall come into force at once.. -

2. Amendment of section 3A, Ordinance LVI of 1962.—In -the Banking Companies Ordinance, 1962 (LVII of 1962) hereinafter referred to as the said Ordinance, for section 3A, the following shall be substituted, namely :—

"3A. Limited application of Ordinance to certain financial institutions.—

(1) The provisions of sections 6, 25, 25A, 25AA, 29, 31, 32, 33, 40, 41, 41A, 41B, 41C, 41D, 42, 83, 84 and 94 of this Ordinance shall, with such modifications as the State Bank may determine from time

. to time in relation to. activities which have implications for the monetary or credit. policies of the State Bank, apply to the Investment Corporation of Pakistan, the National Investment Unit Trust, the Pakistan Industrial Credit and Investment Corporation, the House Building Finance Corporation, the National Development Finance Corporation, the Bankers Equity Limited, the Pak-Libya Holding Company Limited, the Pakistan Kuwait Investment Company Limited, the Saudi-Pak Industrial and Agricultural Investment Company Limited, the Small Business Finance Corporation, the Regional Development Finance Corporation, investment finance Companies, venture capital companies, housing finance companies and such other companies, corporations or institutions or class of companies, corporations or-institutions which carry on one or more of the businesses enumerated in section 7 of this Ordinance, save and except for leasing companies and modaraba companies, as the Federal Government may from time to time, by notification in thé Official Gazette, specify in this behalf.

(2). All notifications issued by the Federal Government which are inconsistent with the. provisions of sub-section (1) including such notifications. in respect of the National Development Leasing

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Corporations, Leasing Companies and Modaraba Companies shall stand rescinded with immediate effect.”.

3. Amendment of section 8, Ordinance LVII of 1962.—In the said Ordinance, in section 8,— :

(a) _ in the first proviso, in clause (b) for the figures, words, commas and brackets “26 of the Companies Act, 1913 (VII of 1913)” the figures, words, commas and brackets “42 of the Companies Ordinance, 1984 (XLVII of 1984)” shall be substituted ; and

(b) in the second proviso, for the words “Federal Government”, the words “State Bank” shall be substituted.

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4. » Amendment of section 25, Ordinance LVII of 1962.—(1) In the said Ordinance, in section 25, in sub-section (3),—

(a) for the word “two”, the word * twenty” ” shall be substituted ; and

(b) - for the words “five hundred”, the wotte “one thousand” shall be substituted.

5. Amendment of section 25B, Ordinance LVIL of 1962.—In the said Ordinance, in section 25B, after the word “agricultural”, the words “and other” shall be inserted.

6. . Amendment of section 26, Ordinance LVII of 1962,—In the said Ordinance, in section 26,— 2

(a) (i) inthe marginal heading, for the words “Federal Government”, the words “State Bank” shall be substituted ; and

(ii), for the words “Federal Government”, the words “State Bank” shall be substituted ; and

(b) for the word “all”, the words “any class of ” shall be substituted.

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

(a) in sub-section (5) for the words “appeal to the Federal Government” the words “apply for review to the-Central Board of the State Bank” shall be substituted ; and

(b). for sub-section (6) the following shall be substituted, namely :—

“(6) The decision of the State Bank subject to the result of review
. under sub-section (5), if any, shall be final.”

8. Insertion of new section 27B, Ordinance LVII of 1962.—In the
said Ordinance, after section 27A, the following new section shall be inserted,
namely :—

“27B. Disruptive union activities —(1) No officer or member of a trade

union in a banking company shall use any bank facilities including

‘a car or telephone to promote trade union activities, or carry

weapons into bank premises unless so authorized by the manage-

ment, or carry on trade union activities during office hours, or

subject bank officials to physical harassment or abuse and nor shall

he be a person who is not an Sa he of the banking: company in
question.

(2) Any person violating any of the provisions of sub-section (1) shall
be guilty of an offence punishable with imprisonment of either
description which may extend to three years, or with fine, or with
both.

9. — Insertion of new sections 33A and 33B, Ordinance LVII of
1962.—In the said Ordinance, after, section 33, the following new sections shall
be inserted, namely :—

“33A. Fidelity and secrecy—(1) Subject to sub-section (4), every bank
and financial institution shall, except as otherwise required by law,
observe the practices and usage customaty among bankers and, in
particular, shall not divulge any information relating to the affairs of
its customers except in‘circumstances in which it is, in accordance
with law, practice and usage customary among bankers, necessary
or appropriate for a bank to divulge such information.

(2) Every president, chairman, member of the Board, administrator,
auditor, adviser, officer or other employee of any bank and financial
institution shall, before entering upon his office, make a declaration
of fidelity and secrecy in such form as may be prescribed.

(3) Notwithstanding anything contained in sub-section (1) and. (2),
every balance sheet and profit and loss account statement prepared
by a bank and financial institution shall include statements prepared

in such form and manner as the State Bank may specify in respect of written off loans or any other financial relief of five hundred thousand rupees or above allowed to a person as well as the provision, if any, made for bad or doubtful debts. :

(4) The State Bank, of Pakistan may, if satisfied that it is necessary so to do at the time* of holding general-elections under any law relating thereto, publish a list of persons to whom any loans, advances or credits were extended by a bank or financial institution, either in their own names or in the names of their spouses or dependents or of their business concerns (if mainly owned and managed by them) which were due and payable and had not been paid back for more than one year from the due date, or whose loans were unjustifiably written off in violation of banking practices, rules or regulations on or after such date as may be determined by the Government :

Provided that before publishing the name of any person in any such list he shall be given prior notice and, if he so requests, 'an opportunity of hearing.

33B. Guidelines by the State Bank. The State Bank may at any time either on the request of any one or more banking companies or the Federal Government or suo motu, lay down general guidelines for facilitating recovery of bad or doubtful, loans, advances or finance by giving incentives to borrowers or customers to make repayments within a specified time frame by making adjustments or remissions in relation to interest or mark-up or part of the principal amount in cases in which all full recovery is not possible by reason of inadequacy of security or as part of a general scheme for the rehabilitation of sick units." 6

10. Amendment of section 40, Ordinance LVI of 1962.—In the said Ordinance, in section 40,—

(a) for sub-section (6), the following shall be substituted, namely :—
"(6) The State Bank shall, if it has been directed by the Federal Government to make an inspection, and, in any other case, may, submit a report to the Federal Government on any inspection made under this section." ; and

(b) 'sub-section (7) shall be omitted.

11. Insertion of new section 40A, Ordinance LVII of 1962.—In the said Ordinance, after section 40, the following new section shall be inserted, namely :— ;

“40A. Responsibility of State Bank.—(1) Without prejudice to the powers conferred on the State Bank under Section 40 and notwithstanding anything contained therein, it shall be the responsibility and duty of the State Bank to systematically monitor the performance of every banking company so as to ensure that it is complying with the

’ applicable statutory criteria and banking rules and regulations.

(2) In every cases in which the management of a banking company is failing to discharge its responsibility in accordance with the applicable statutory criteria and banking rules or regulations, or is failing to protect the interests of depositors, or is advancing, loans or finances without due regard for the best”interests of the banking company or for reasons other than the merits, it shall be the duty of the State Bank, in addition to taking such remedial ‘steps as may be required in accordance with law, to report the shortcomings and violations on the part of the banking company’s management to the Federal Government every quarter, or more frequently, if so deemed necessary, So as to prevent any grave or irreparable loss from being caused to the banking company or its depositors, along with- its recommendations and the action, if any, taken by it.

12. Amendment of section 41A, Ordinance LVII of 1962.—In the said Ordinance, in section 41A, in sub-section (4), in clause (a), for the word “months”, the word “years” shall be substituted.

°13. Amendment of section 41B, Ordinance LVII of 1962.—In the Said Ordinance, in section'41B, in sub-section (2) for the word™“two”, the word “three” shall be substituted. :

- 14, Insertion of new section 41D, Ordinance LVII of 1962,—In the said Ordinance after section 41C, the following new section. shall be inserted, . namely :—

“41D. Prosecution of directors, chief executives or other officers.—Notwithstanding anything contained in section 41A, the State Bank may direct prosecution of a director or chief executive by whatever’

_ name called or other officer who, in its opinion, has knowingly acted in a manner causing loss of depositors’ money or of the income of the banking company.

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Explanation.—For the purpose of this section a director or chief executive or other officer shall be deemed to have acted knowingly if he has departed from established banking practices and procedures or circumvented the regulations or related credit restrictions laid down by the State Bank of Pakistan from time to time.”

Insertion of new PART IVA, Ordinance LVII of 1962,—In the

said Ordinance, after PART IV, the following new PART shall be inserted,

namely :—

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PART IVA

BANKING MOHTASIB

Appointment of Mohtasib—(1) There shall be a Banking Mohtasib who shall be appointed by the President in consultation with the Governor of the State Bank of Pakistan.

The Banking Mohtasib shall be a person of high integrity and unimpeachable banking or legal credentials who is not a share-holder of a banking company or financial institution and is not, and has not, been a bank defaulter.

The jurisdiction of the Banking Mohtasib in ‘relation to banking transactions shall be to—*

(a) enquire into one point of banking malpractices ;

(b) serene cctgericy: or discriminatory actions ;

(c) violations of banking laws, rules, regulations or guidelines ;

(d) inordinate delays or inefficiency ; and

(e) corruption, nepotism or other forms of maladministration.

The Banking Mohtasib shall hold office for a period of three years and shall not be eligible for any extension of tenure or for re-appointment under any circumstances: whatsoever, ;

The Banking Mohtasib shall not hold any other office of profit in the

service of Pakistan or occupy any other position carrying the right to remuneration for the rendering of services.

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82B. Terms and conditions of the Banking Mohtasib.—(1) The Banking

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Mohtasib shall be entitled to the same salary and allowances as a

. Judge of a High Court.

The Banking Mohtasib may be removed from office on the ground that he has been guilty of misconduct or that he is incapable of properly performing the duties of his office by reason of physical or mental incapacity:

Provided that he shall have the right to file an appeal before the Federal Services Tribunal.

The Banking Mohtasib' shall be provided with. a secretariat to be appointed in consultation with the State Bank. Appointments to the Secretariat may be made on deputation from the State Bank of Pakistan or other banks or otherwise on the basis of professional qualifications and the costs of the Secretariat shall be shared by banks in such proportions as may be determined by the State Bank of Pakistan. '

The Banking Mohtasib shall have the power and responsibility—

- (a) to entertain complaints from customers, borrowers, banks or from any concerned body or organization ;

(b) to facilitate the amicable resolution of complaints after giving hearings to the complainant and the concemed bank ; and

(c) in the event that complaints cannot be resolved by consent, to give findings which shall be acted upon in the manner set out herein.

The Banking Mohtasib shall exercise his powers and authority in the following manner :—

(a) In relation to all banks operating in Pakistan,—The Banking Mohtasib shall be authorised to entertain reese, camel of the nature set out herein below :—

' (i) failure to act in accordance with banking laws and

regulations including policy directives or guidelines

issued by the State Bank from time to time :

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Provided that if there is a dispute as to the proper interpretation of any regulations, directions or guidelines, the same shall be referred to the State Bank for clarification.

delays or fraud in relation to the payment or collection of cheques, drafts or other banking instruments or the transfer of funds ; < fraudulent or unauthorised withdrawals or debit entries in accounts ;

complaints from 'exporters or importers relating to banking services and obligations including letter of credits ;

complaints from holders of foreign currency accounts, whether maintained by residents or non-residents ;

“complaints relating to remittances to or from abroad ;

complaints relating to mark-up or interest rates based on the ground of a violation of an aera or of State Bank directives ; and

complaints relating to the payment of utility bills.

(b) In relation to 'banks in the public sector—The Banking Mohtasib shall be authorized to entertain complaints against such banks on the following additional grounds as well—

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corrupt or malafide practices by bank officers ; gross dereliction of duty in dealing with customers ; and

inordinate delays in taking decisions.

82C. Reference to Banking Mohtasib by Court.—If at any time during the pendency of a case, a court trying a case relating to recovery of loan

by a banking company is of the opinion that the management of the

_ banking company has prima facie acted:in a malafide manner, or in violation of banking rules and regulations, it may make reference to

the Banking Mohtasib for inquirifg into the matter and passing such

order in accordance with the provisions hereof as may deem fit: —

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Provided that the making of a reference shall not prevent the court from deciding the claim before it on merits.

Procedure for making complaints—(1) A complaint shall be made on solemn affirmation or oath in writing addressed to the Banking Mohtasib. The complaint shall set out the full particulars of the transaction complained of and the name and address of the complainant.

Prior to making a complaint the complainant shall intimate in writing to the concerned bank his intention of filing a complaint and if the bank either fails to respond, or makes a reply which is unsatisfactory to the complaint, within a period of three months, the complainant may file a complaint at any time within a further period of three months :

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.

The Banking Mohtasib may adopt any procedure as he considers appropriate for investigating a complaint :

Provided that he shall not pass any order against a bank without first giving it a notice and an opportunity of a hearing, —

Subject to section 82C, the Banking Mohtasib shall not have any power to issue an order in the nature of a stay order or to entertain any complaints if the matter is pending before a court or other legal forum.

The Banking Mohtasib may reject a complaint summarily or he may accept the same or pass any other order he deems fit :

Provided that in each case he shall pass a reasoned order for his decision.

Recommendations for implementation—(1) In the event the Banking Mohtasib comes to the conclusion that the complaint is

justified, in part or in whole, he shall try and facilitate an amicable resolution or settlement by resort to mediation and failing that communicate his. findings to the concerned bank with the . direction—

' (a) to reconsider the matter ;

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(b) to modify or cancel the earlier decision, action or failure to take the appropriate action ;

(c) to pay reasonable compensation to the complainant as fixed by the Banking Mohtasib ;

(d) to take the requisite steps to improve the functioning or efficiency of the bank ; and

(e) to take such other remedial steps or actions as may "be specified by the Banking Mohtasib. . .

The Banking Mohtasib may, in any case,-he deems fit or proper, forward a report to the State Bank recommending—

(a) an inquiry, or the taking of the requisite steps or legal proceedings against a bank which has acted in violation of banking laws, procedure, regulations or directives of the State Bank ; and 7

(b) in the case of a bank in the public-sector in cases of banking

malpractices or corruption, nepotism or gross and flagrant - dereliction by bank officers of their duties and responsibilities, the initiation of such action including a criminal prosecution or disciplinary proceedings as the State Bank may deem fit, either by itself, or through filing a report with the Government of Pakistan.

In no case whatsoever shall the Banking Mohtasib have the power

~ to direct that loans, advances or finances be given to a complainant.

Any bank, or official of a bank or a complainant aggrieved by an order passed by the Banking Mohtasib may file an appeal with the State Bank within thirty days which shall pass any order thereon it deems fit.

Any order passed by the Banking Mohtasib which has not been appealed' against, or any order passed by the State Bank in appeal, as the case may be, shall become final and operative and if not implemented shall render the bank concerned to such action including the imposition of a fine or penalty as the State Bank may deem

fit, and in relation to a bank officer, to the appropriate disciplinary or other proceedings. :

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(6) Nothing contained herein shall prevent a complainant from filing a suit against a bank in the event his complaint is rejected.

82F. Power to call for information.—The Banking Mohtasib shall have the power for purposes of disposing a case, to require a bank to disclose to him any information subject to the following conditions :—

f(a) The Banking Mohtasib shall make every endeavour to ensure that banking confidentiality is maintained as required by banking law and procedure and shall take no action which is violative thereof.

(b) The Banking Mohtasib may call for any or all such documents which are relevant or pertinent for purposes of deciding a complaint : .

Provided that he shall not be entitled to call for unrelated "documents or documents which may compromise the bank's position in relation to other customers :

Provided further that in cases where the Banking Mohtasib is investigating cases of corruption, he shall have a greater latitude in relation to the inspection of documents.

(c) In the event of a bank refusing to furnish information, or copies of relevant documents, the Banking Mohtasib shall not * . be authorised to compel the bank to comply with his order but he may draw an adverse inference and comment on the same in his findings. ;

82G. Report of Banking Mohtasib.—(1) The Banking *Mohtasib shall send to the State Bank of Pakistan on or before the 31st March in every succeeding year a report setting out a review of the activities of his office during the preceding year. :

(2) The Banking Mohtasib shall also submit a report or reports to the State Bank of Pakistan containing the results of such inquiries as he may be directed to conduct by the State Bank from time to time.

(3) All reports submitted by the Banking Mohtasib shall be published and released to the public unless he directs otherwise for reasons to be recorded.

16. Amendment of section 83, Ordinance LVII of 1962.—In sub-section \$3 (1), (i) after sub-section (1A), the following new sub-section shall be inserted, namely :—

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“(IAA) Any executive officer, director or chief executive of a banking
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company which is either directly or indirectly owned, controlled or managed by the Federal Government or a Provincial Government who extends, or aids in extending, a loan, advance, or any financial facility to a borrower or customer on the verbal instructions of a holder of a public office without reducing the terms of the instructions into writing and drawing them to the attention of his superior ‘officer, or the board of directors; shall be guilty of an offence punishable with imprisonment of either description which may extend to one year, or with fine, or with both, in addition to such other action which may be taken against him in accordance with law; and”:

in sub-section (5)—

(a) for the word “two”, the word “twenty” shall be substituted H and :

(b) for the word “hundred”, the word “thousand” shall be substituted,

Insertion of new section 83A, Ordinance LVII of 1962.—In the said Ordinance, after section 83, the following new section shall be inserted, namely :—

“83A. Dishonest removal of pledged goods.—Whoever, dishonestly

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Ordinance,
41C, 41D”

removes or disposes of any goods pledged with any banking company as security for the payment of any debt, loan, finance or other similar facility or removes or disposes of any such goods Without the prior approval in writing of the banking company, shall be punishable with imprisonment for a term which may extend to three years, and shall also be liable to fine which may extend to the value of the goods removed or disposed of.

Amendment of section 91, Ordinance LVII of 1962.—In the said after the figure “40”, the figure, commas and letters “41, 41A, 41B, shall-be inserted.

