

**A**

**BILL**

*to consolidate law for the regulation of non-banking finance companies and collective investment vehicles and protection of investors*

WHEREAS it is expedient to enact a law to provide for the beneficial regulation of non-banking finance companies and collective investment vehicles, development of a robust non-banking financial sector and the protection of investors and matters connected therewith and incidental thereto;

It is hereby enacted as follows: -

**PART I**

**PRELIMINARY**

**1. Short title, extent and commencement.**- (1) This Act may be called the Non-Banking Finance Companies and Collective Investment Vehicles Act, 2020.

(2) It extends to the whole of Pakistan.

(3) This section shall come into force at once and the remaining provisions of this Act shall come into force on such date as the Federal Government may, by notification in the official Gazette, appoint and different dates may be so appointed for different provisions.

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

(i) “**asset management services**” mean the business of providing services for the management of collective investment schemes;

(ii) “**ancillary business**” means any business which is incidental or ancillary to the forms of business provided in section 3 of this Act and meeting such terms and conditions as may be specified;

- (iii) **“collateral management company”** means a non-banking finance company licensed by the Commission to provide collateral management services;
- (iv) **“collateral management services”** means the following services rendered or permitted to be rendered by a person for the purposes of enabling collateralization and exchange trading of produce and includes:--
  - (i) warehousing, i.e. provision of quality storage and preservation services for a range of agricultural commodities;
  - (ii) issuance of credible warehouse receipts and other necessary arrangements for agricultural commodity financing;
  - (iii) stock audit and verification services;
  - (iv) accreditation of warehouses; and/or
  - (v) any other service as may be notified by the Commission in the official Gazette;
- (v) **“collective investment scheme”** means any arrangement whose sole purpose is the collective investment of funds in a portfolio of securities, or other financial assets for profits, income or other returns, and where the participants, who have pooled in the funds, do not have any day to day control over the management of the scheme, whether or not they have the right to be consulted or to give direction in respect of such management:

Provided that the following shall not be considered as a collective investment scheme-

  - (a) welfare trusts or gratuity trusts or provident funds or pension funds setup by an employer for the benefit of its employees; and
  - (b) any such pool of funds which is separately regulated by the Commission or which is already established under any specific law;
- (vi) **“collective investment vehicle”** include-
  - (a) collective investment schemes;

- (b) private funds;
  - (c) real estate investment trust (**REIT**) scheme;
  - (d) pension funds; and
  - (e) any other vehicle as may be notified by the Commission in the official Gazette;
- (vii) “**Commission**” means the Securities and Exchange Commission of Pakistan established under the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);
- (viii) “**company**” means a company as defined under the Companies Act, 2017 (XIX of 2017);
- (ix) “**Court**” shall have the same meaning as assign to it in clause (ia) of sub-section (1) of section 2 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);
- (x) “**discounting services**” mean the business of discounting of financial instruments on conventional or Islamic basis;
- (xi) “**deposit**” means any deposit of money with, or any money borrowed or raised by a non-banking finance company, but shall not include,-
- (a) redeemable capital issued under section 66 of the Companies Act, 2017 (XIX of 2017);
  - (b) finance obtained from a financial institution;
  - (c) advance or application money for subscription of shares in the non-banking finance company;
  - (d) cash margin or security deposit received in respect of finance provided by the non-banking finance company;
  - (e) subordinated loans; and
  - (f) finance obtained from major shareholders, sponsors, and associated companies:

Provided that the Commission shall be the final authority to determine, by an order in writing, whether any money deposited, raised or borrowed falls under the definition of deposit or otherwise;

- (xii) **“depositor of produce”** means a person who delivers Produce to the Warehouse Operator for storage or transfer of ownership;
- (xiii) **“electronic warehouse receipt” or “EWR”** means a warehouse receipt as proof of storage of the produce of the depositor held at the accredited warehouse issued by the warehouse operator through the electronic warehouse receipt system of the collateral management company;
- (xiv) **“electronic warehouse receipt system”** means a centralized electronic system as maintained by collateral management company for registration of possession and ownership of produce stored in accredited warehouse and its transfer and matters incidental thereto;
- (xv) **“family members”** means a spouse, dependent lineal ascendants and descendants and dependent brothers and sisters;
- (xvi) **“finance”** includes,-
  - (a) any accommodation or facility on the basis of participation in profit and loss, *musharika* or *modaraba* basis mark-up or mark-down in price, hire-purchase, lease, rent-sharing, bills of exchange, promissory notes or other instruments with or without buy-back arrangement by a seller, participation term certificate, *musharika* or *modaraba* certificate, term finance certificate;
  - (b) guarantees, indemnities, letters of credit or any other financial engagement, issued or undertaken on behalf of a person, with a corresponding obligation of that person;
  - (c) a loan, advance, discounting services to any person;
  - (d) micro financing including any form of finance such as leases advances, consumer loans, housing finance, and agriculture finance;
  - (e) a financial facility or accommodation provided on the basis of Islamic mode of financing; and

- (f) any other form of facility as may be specified;
- (xvii) **“fund management non-banking finance company”** means a non-banking finance company licensed by the Commission to undertake asset management services or REIT management services or pension fund scheme business or private equity and venture capital fund management services or investment advisory services or any combination thereof;
- (xviii) **“housing finance services”** means the business of providing consumer or commercial finance to a person for the purchase or construction of house or apartment or for purchase of land and construction thereupon including the facilities availed for the purpose of making improvements in house or apartment;
- (xix) **“investment advisory services”** means the services provided for managing discretionary or non-discretionary portfolios for both individual and institutional clients and include the business of advising others as to the value of securities or as to the advisability of investing in, purchasing or selling of securities, for remuneration;
- (xx) **“investment company”** means a closed end fund in a company structure registered with the Commission in accordance with such criteria as may be specified;
- (xxi) **“investment finance services”** means the business of providing finance;
- (xxii) **“key executives”** means any executive, officer acting as second to chief executive officer including chief operating officer or by whatever name called, any person responsible for heading any specified licensed regulated form of business, the chief financial officer, company secretary and such other executives of the NBFC, as may be specified;
- (xxiii) **“leasing”** means the business of providing finance on operating lease or finance lease or Ijarah basis;
- (xxiv) **“lending NBFC”** means an NBFC licensed by the Commission to undertake leasing or housing finance services or investment finance services or discounting services;

(xxv) “**major shareholder**” means a person who, individually or in concert with his family members or as part of a group, holds five percent or more shares having voting rights in the paid-up capital of the company;

Explanation I:- For the purpose of this definition, group means persons, whether natural or legal, if one of them or his family members, in case of a natural person, or, its subsidiary or associated company, if it is a legal person, have control or hold direct or indirect substantial ownership interest or have power to exercise significant influence over the other.

Explanation II:- For the purpose of this clause the expression-

- (a) “subsidiary” shall have the same meaning as defined in section 2(1)(68) of the Companies Act, 2017 (XIX of 2017);
- (b) control shall have the same meaning as given in the Securities Act, 2015 (III of 2015);
- (c) substantial ownership means beneficial shareholding of ten percent by a person or by family members; and
- (d) significant influence refers to the management control of the company or the ability to participate in financial operational and risk management policies, either exercised by representation on the Board of Directors, through partnership or by statute or by agreement in the policy making process;

(xxvi) “**non-banking finance company (NBFC)**” includes-

- (a) a NBFC licensed under this Act; and
- (b) a company incorporated inside or outside Pakistan and licensed by the Commission to carry out any one or more forms of business as specified in section 3 of this Act;

(xxvii) “**non-banking microfinance services**” means the business of providing finance, not exceeding the amount as may be specified;

(xxviii) “**officer**” includes any director, chief executive, key executive or other authorized officer of a NBFC;

- (xxix) “**pension fund**” means a fund made up of sub-funds created from the contributions paid by the participants and would consist of all the assets for the time being held or deemed to be held by sub-funds and includes all income or investment returns thereon but excludes fees, charges and expenses related to the management of the investments of sub-funds;
- (xxx) “**pension fund scheme business**” means the business of managing pension funds;
- (xxxi) “**prescribed**” means prescribed by rules made by the Federal Government under this Act;
- (xxxii) “**produce**” in relation to this Act shall include-
- (a) produce of farmers, arising from agriculture including animal husbandry, forest products, re-vegetation, bee raising and farming plantation products, or any other activity or service which promotes the farming business;
  - (b) any product resulting from any of the activities referred to in sub-clause (a), including by-products of products referred to therein;
  - (c) any activity which is intended to increase the production of anything referred to in sub-clauses (a) and (b) or to improve the quality thereof; and
  - (d) any other good or service as may be notified by the Commission in the official Gazette as produce;
- (xxxiii) “**promoter or sponsor**” means a person who has made an application to the Commission to form a non-banking finance company and has contributed initial capital in the proposed company;
- (xxxiv) “**private fund**” means an arrangement which has the purpose of pooling funds from one or more eligible Investors as may be specified for investment in a portfolio of securities or other financial assets for profit, income or other returns and where participants of the funds, neither have day to day control over the management of fund property, nor the right to give directions in respect of such management and which is established and operated by private fund management company:

Provided that for the purpose of this Act following shall not classify

as a private fund-

- (a) collective investment schemes registered and regulated under this Act;
- (b) welfare trusts or gratuity trusts or provident funds or pension funds setup by an employer for the benefit of its employees; and
- (c) any such pool of funds which is separately regulated by the Commission or which is already established under any specific law;

(xxxv) “**private equity and venture capital fund management services**” means services provided for management of private funds;

(xxxvi) “**regulated activity** ” shall have the same meaning as assign to it in clause (pa) of sub-section (1) of section 2 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997) and includes form of business as specified in section 3 of this Act;

(xxxvii) “**regulated person**” shall have the same meaning as assigned to it in clause (pb) of sub-section (1) of section 2 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);

(xxxviii) “**regulations**” means regulations made by the Commission under this Act;

(xxxix) “**REIT scheme**” means a scheme in a closed end structure for investment in a real estate projects;

(xl) “**Real Estate Investment Trust (REIT) management services**” means the business of providing services for the management of REIT schemes;

(xli) “**rules**” means rules made under this Act;

(xlii) “**specified**” means specified through regulations made by the Commission under this Act;

(xlili) “**trustee**” means a company registered as a trustee of a collective investment vehicle under this Act;



- (xliv) “**voluntary pension services**” means the business of managing pension fund.
- (xliv) “**warehouse**” means any premises, accredited by the collateral management company , to be used for the custody of Produce deposited by a person;
- (xlvi) “**warehousing guidelines**” means the guidelines issued by the CMC with prior approval of the Commission for compliance by accredited warehouse operator;
- (xlvii) “**warehouse operator**” means any corporate entity or person including a warehouseman managing an accredited warehouse;
- (xlviii) “**standard operating procedures**” means Procedures made by collateral management company with prior approval of the Commission;

## **PART II**

### **NON-BANKING FINANCE COMPANIES**

**3. Scope of forms of business.-** For the purpose of this Act, a person shall be deemed to be carrying on a regulated activity if such person carries out or purports to do so following activities or business -

- (i) agriculture finance services;
- (ii) asset management services;
- (iii) collateral management services;
- (iv) discounting services;
- (v) housing finance services;
- (vi) investment advisory services;
- (vii) investment finance services;
- (viii) leasing;
- (ix) non-banking microfinancing services;
- (x) pension fund scheme business;
- (xi) private equity and venture capital fund management services;

- (xii) real estate investment trust (REIT) management services; and
- (xiii) any other regulated form of business as may be notified by the Federal Government.

**4. Licensing requirement.** – (1) No person shall form or operate or assist in forming or operating a NBFC or undertake any regulated activity specified in section 3 except under and in accordance with the license granted by the Commission under section 6 and 7:

Provided that this section shall not apply, in so far as extending finance, by the entities registered or licensed by State Bank of Pakistan.

(2) The license granted under this Act shall specify the regulated activity or activities that the NBFC is permitted to undertake and such person shall be restricted to only such regulated activity or activities:

Provided that the NBFC may perform such other ancillary business as may be specified by the Commission:

(3) The Commission may, by notification in the official Gazette, exempt any person or class of persons from the operation of sub-section (1) subject to such terms and conditions as may be specified.

(4) Any contravention of sub-section (1) shall be an offence punishable with imprisonment of either description which may extend to seven years or fine, which may extend to one hundred million rupees, or where contravention resulted in substantial loss to other person or resulted in pecuniary gain to the person who committed the offence, to a fine which may extend to one hundred million rupees or twice the amount of loss caused or gain made whichever is higher or with both.

**5. Eligibility for licensing.-** A license granted under section 6 shall be subject to compliance with the requirements of this Act and such other terms and conditions as may be specified, including but not limited to the following-

- (i) a company is incorporated under the Companies Act, 2017 (XIX of 2017) with principle line of business to provide any one or more form of business under Section 3 of this Act subject to grant of license under this Act;
- (ii) each of its promoters, proposed directors, major shareholders, chief executive officer and chairman of the board of directors fulfills the terms

and conditions mentioned in the fit and proper criteria as may be specified and complies with the requirements of this Act and the rules and the regulations made under this Act;

- (iii) branch of a foreign NBFC which is licensed by its respective country regulatory authority to engage in a regulated form of business or businesses as specified in section 3;

Explanation:- For the purpose of this section, “foreign non-banking finance company” means a non-banking finance company, incorporated outside Pakistan, which undertakes a single or multiple regulated forms of business in Pakistan through a branch or branches under a license or licenses obtained from the Commission under section 6; and

- (iv) companies engaged in the business of providing finance as ancillary business:

Provided that every company in existence which is already engaged in the regulated form of business of providing finance, before the expiry of one year from coming into force of this Act, shall apply in writing to the Commission for grant of a license under this Act.

**6. Application and Grant of license.-** (1) Subject to section 4, an application for grant of license under this Act shall be made to the Commission in such form and manner and subject to such terms and conditions and along with such non-refundable fee as may be specified.

(2) Without prejudice to the conditions prescribed under sub-section (4), the Commission may, while granting license, impose such additional conditions, as it may consider necessary.

(3) Where the Commission is not satisfied with respect to all or any of the matters referred to in this section it shall refuse an application made under this section provided that Commission shall provide an opportunity of hearing to the applicant before refusing such application.

(4) If a NBFC fails to commence business within such period as notified by the Commission while issuing license, the license shall be deemed to be cancelled unless the specified period is extended by the Commission on the application made to it by the NBFC.

(5) In case of a voluntary winding up of a NBFC, the license(s) of a NBFC shall be deemed to be cancelled on the date it obtains certificate from the Commission in terms of sub-section (2) of section 23.

(6) A NBFC may surrender one or more of its licenses subject to compliance with the terms and conditions as may be specified.

### **PART III**

#### **COLLECTIVE INVESTMENT VEHICLE**

**7. Registration requirements.-** (1) No person shall establish or operate or assist in forming or operating a collective investment vehicle unless such person is a NBFC licensed by the Commission under section 6 and the collective investment vehicle is registered with the Commission under section 8 in such form and manner and subject to such terms and conditions as may be specified.

(2) Any contravention of this section shall be an offence punishable under sub-section (4) of section 4.

**8. Grant of registration.-** (1) An application for grant of registration of a collective investment vehicle under this Act shall be made to the Commission in such form and manner and accompanied by such non-refundable fee as may be specified .

(2) Subject to the provisions of this Act, the Commission may, grant the registration to the collective investment vehicle or refuse the application.

**9. Offer of units or certificate of collective investment vehicle to public. –** No NBFC shall make public offer of units or certificates of collective investment vehicle unless the offering document of the collective investment vehicle submitted by the NBFC in the manner as may be specified, is approved by the Commission.

**10. Trustee of collective investment vehicle.-** (1) No person shall act as or perform the functions of a trustee of collective investment vehicle under this Act unless such person is registered with the Commission to act as a trustee.

(2) A registration granted under this section shall be subject to compliance with the requirements of this Act and such other terms and conditions as may be specified.

(3) An application for grant of registration to act as a trustee under this Act shall be made to the Commission in such form and manner and accompanied by such non-refundable fee and subject to such terms and conditions as may be specified.

**11. Transfer of management rights of collective investment vehicle. -** The management rights of collective investment vehicle may be transferred to another fund management NBFC subject to terms and conditions specified by the Commission.

**12. Extinguishment or revocation of collective investment vehicle.-** (1) A collective investment vehicle may be extinguished or revoked subject to terms and conditions as may be specified.

(2) The trustee shall be authorized to dispose of the assets of the collective investment vehicle in the best interest of the unit holders and any sale, settlement or arrangement executed by the trustee in pursuance of extinguishment or revocation of collective investment vehicle shall be binding on the fund management NBFC and the unit holders.

(3) The collective investment vehicles may be de-registered after fulfilling such terms and conditions as may be specified.

#### **PART IV**

#### **COLLATERAL MANAGEMENT COMPANIES**

**13. Licensing requirement.-** No person shall establish or operate or assist in forming or operating a collateral management company unless such person is an NBFC licensed by the Commission under section 6.

(2) Any contravention of this section shall be an offence punishable under sub-section (4) of section 4.

**14. Regulations of collateral management company.**—(1) The regulations of a collateral management company, may make provision for:—

- (a) accreditation of warehouse;
- (b) cancellation of certificate of accreditation;
- (c) inspection of warehouse(s);
- (d) electronic warehouse receipts; and
- (e) generally for carrying on the business of collateral management services.

(2) The Commission may, by notice in writing served on a collateral management company, require it —

- (a) to make regulations specified in the notice within the period specified; or
- (b) to amend regulations referred to in the notice in the manner and within the period specified in the notice.

(3) Where the Commission is satisfied that a collateral management company has not complied with a requirement referred to in sub-section (2) within the period specified in the notice, the Commission may make or amend the regulations specified in the notice instead of the collateral management company and the regulations so made or amended shall be deemed to have been made or amended by the collateral management company and shall have effect accordingly.

(4) No regulation of a collateral management company or any amendment (whether by way of rescission, substitution, alteration or addition) to a regulation shall have effect unless it has the approval in writing of the Commission.

(5) A collateral management company shall submit or cause to be submitted to the Commission for its approval the regulations and every amendment thereto that require approval under sub-section (1), together with explanations of their purpose and likely effect, including their

effect on the investing public, in sufficient detail to enable the Commission to decide whether to approve them or refuse to approve them.

(6) The Commission shall, by notice in writing served on the collateral management company, give its approval or refuse to give its approval to the regulations or amendment of the regulations (as the case may be) or any part thereof.

(7) The Commission may give its approval under sub-section (6) subject to requirements that shall be satisfied before the regulations or amendment of the regulations or any part thereof take effect.

(8) Subject to the approval of the Commission under sub-section (6) all regulations or amendments to the regulations made by the collateral management company shall be notified in the official Gazette and shall take effect from such date as may be specified in the notification.

**15. Collateral management company to assist the Commission.**—A collateral management company shall provide such assistance to the Commission as the Commission may require for the performance of the functions and duties of the Commission, including the furnishing of such returns and the provision of such books and other information relating to the business of the collateral management services or any other information as the Commission may require from time to time for the proper administration of this Act.

**16. Accreditation of Warehouse.**- (1) Collateral management company may grant certificate of accreditation to a warehouse, subject to such terms and conditions as may be specified.

(2) Collateral management company may cancel certificate of accreditation to a warehouse, subject to such terms and conditions as may be specified.

**17. Periodic inspection of warehouses.-** Collateral management company may undertake periodic inspection of the conditions of accredited warehouses subject to such terms and conditions as may be specified.

**18. Guidelines of Collateral Management Company.-** Collateral management company may prepare warehousing guidelines and standard operating procedures in accordance with the applicable laws and as much as possible to meet the international standards for the accreditation, management and inspection of warehouses subject to the approval of the Commission.

**19. Electronic warehouse receipts.--** (1) Against the produce deposited in the warehouse by each depositor of produce, the warehouse operator shall issue an electronic warehouse receipts subject such terms and conditions as may be specified.

(2) Collateral management company shall be the repository of the electronic warehouse receipts and shall control and maintain the records of such receipts.

(3) The electronic warehouse receipts issued by a warehouse operator may be traded on the futures exchange to another person and such other person holding electronic warehouse receipts , as the case may be, shall be entitled to receive the produce specified in it.

(4) For the purpose of settlement of electronic warehouse receipts, the Futures Exchange shall establish connectivity with the electronic warehouse receipt system of collateral management company and shall fulfill all the parameters, conditions, instructions as specified by the collateral management company in the standard operating procedures.

(5) Collateral management company may make necessary arrangements for provision of pledging against the electronic warehouse receipts, issued in respect of the produce, including the matters concerning the collateral management of such financing and matters connected therewith in accordance with such terms and conditions as may be provided by the collateral management company in its standard operating procedures:



Provided that the electronic warehouse receipts may be used to create a security interest by a customer to secure its obligation or that of another person in accordance with the Financial Institutions (Secured Transactions) Act, 2016 (XXXI of 2016).

Explanation:- For the purposes of this section the expression “customer” shall have the same meaning as assigned to it under clause (xiii) of sub-section 1 of section 2 of the Financial Institutions (Secured Transactions) Act, 2016 (XXXI of 2016) and shall be deemed to include an entity.

(6) The futures exchange may offer to trade futures contracts based on electronic warehouse receipts as commodity or traded as securities in the securities exchange in accordance with such terms and conditions as may be notified by the Commission.

**20. Negotiation of warehouse receipts.-** (1) If a person having sold, mortgaged or pledged commodities that are in the custody of a warehouse operator and for which a warehouse receipt has been certified, continues in possession of the such warehouse receipt, then the subsequent negotiation of it by that person under any sale or other disposition of the underlying commodities to any person receiving such receipt in good faith, for valuable consideration and without notice of the previous sale, mortgage or pledge, has the same effect as if a previous purchaser, mortgagee or pledgee of the underlying commodities, as the case may be, had expressly authorized the subsequent negotiation.

(2) The Commission may by regulation lay down further terms in relation to negotiation of a warehouse receipt issued in electronic form.

**21. Responsibility towards depositors and interested parties.-** A collateral management company shall, in the case of a warehouse receipt certified by it, be responsible for discharge of obligations of a warehouse operator in case of any default by the warehouse operator towards the depositor, holder and any interested party including responsibility for settlement of any claim made by such depositor, holder and the interested party:

Provided that, unless otherwise agreed, such responsibility shall not extend to instances of *force majeure*, government control or any other event beyond the control of a collateral management company.

**22. Lien over commodities and prohibition of dealing.-** (1) A warehouse operator and a collateral management company shall have first lien over the commodities deposited in the accredited warehouse in respect of all reasonable charges for storage and preservation of the commodities and for the provision of the relevant collateral management services.

(2) Notwithstanding anything contained in any other law for the time being in force, no warehouse operator or collateral management company shall, without prior written consent of the holder or interested party, offer or cause to be offered, directly or indirectly, the commodities of such holder or interested party as collateral or security for any loan, finance or other like benefit to any third party. Any collateral, security or charge created in violation of this section shall be void and of no legal effect.

**23. Insurance of Produce in a Warehouse. -** A warehouse operator shall be responsible to maintain the quality, quantity and weight of the produce of the depositor and shall obtain necessary insurance for the produce stored in his warehouse.

**24. Warehouse operator not to deal in or lending or financing against Produce in Warehouse. -** Notwithstanding anything contained in any other law for the time being in force, no warehouse operator shall either on his own account or that of others, deal in, or lend money or finance against the Produce received by him for deposit or custody on behalf of owners or transferor of produce in his warehouse.

## **PART V**

### **AMALGAMATION AND WINDING UP**

**25. Amalgamation of NBFCs.-** (1) Notwithstanding anything contained in any law for the time being in force, NBFCs may be amalgamated with and into each other provided that a draft

scheme containing the terms of such amalgamation has been placed before the shareholders of each of the NBFC concerned separately, and approved by a resolution passed by majority in number representing two thirds in value of the shareholders of each of the said NBFCs, present either in person or by proxy at a meeting called for the purpose.

(2) Notice of every such meeting as is referred to in sub-section (1) shall be given to every shareholder of each of the NBFC concerned in accordance with the relevant articles of association, indicating the time, place and object of the meeting, and shall also be published at least once a week for three consecutive weeks in not less than two newspapers which circulate in the locality or localities where the registered offices of the NBFCs concerned are situated, one of such newspapers being in a language commonly understood in the locality or localities.

(3) Any shareholder, who has voted against the scheme, of amalgamation at the meeting or has given notice in writing at or prior to the meeting to the NBFC concerned or the presiding officer of the meeting that he dissents from the scheme of amalgamation, shall be entitled, in the event of the scheme being sanctioned by the Commission to claim from the NBFC concerned, in respect of the shares held by him in that NBFC, their value as determined by the Commission when sanctioning the scheme and such determination by the Commission as to the value of the shares to be paid to dissenting shareholder shall be final for all purposes.

(4) If the scheme of amalgamation is approved by the requisite majority of shareholders in accordance with the provisions of this section, it shall be submitted to the Commission for sanction and shall, if sanctioned by the Commission by an order in writing passed in this behalf be binding on the NBFCs concerned and also on all the shareholders.

(5) Where a scheme of amalgamation is sanctioned by the Commission under the provisions of this section, the remaining or resulting entity shall transmit a copy of the order sanctioning the scheme to the registrar before whom the NBFC concerned have been registered and the registrar shall, on receipt of any such order, strike off the name of the NBFC hereinafter in this section referred to as the amalgamated NBFC which by reason of the amalgamation will cease to function.

(6) On the sanctioning of scheme of amalgamation by the Commission, the property of the amalgamated NBFC shall, by virtue of the order of sanction, be transferred to and vest in, and the liabilities of the said NBFC shall, by virtue of the said order be transferred to and become the

liabilities of the NBFC which under the scheme of amalgamation is to acquire the business of the amalgamated NBFC, subject in all cases to the terms of the order sanctioning the scheme.

**26. Winding up of NBFCs.-** (1) Notwithstanding anything contained in the Companies Act, 2017 (XIX of 2017), no Court shall entertain an application for winding up of an NBFC by the Court unless such application is accompanied by a certificate in writing from the Commission certifying that it has no objection to the making of such application.

(2) A NBFC shall not file a petition for its winding up unless it satisfies the Commission in the specified manner that it has satisfied all outstanding claims of depositors, creditors and other stakeholders or it is unable to pay in full all its debts to its depositors, creditors and other stakeholders as they accrue and has obtained prior approval of the Commission and the Commission may, in the interest of the public, impose such conditions as it deems appropriate.

(3) The Court while ordering the winding up of a lending NBFC, if the circumstances permits and deemed fit, may direct the official liquidator to give preference in payment to certain class or classes of depositors having value not exceeding such amount, individually or collectively, as determined and deemed fit.

## **PART VI**

### **OTHER REQUIREMENTS**

**27. Requirement as to minimum equity requirement.-** (1) No NBFC shall—

- (i) commence business unless it has such minimum equity as may be specified by the Commission; or
- (ii) continue business unless it has such minimum equity as may be specified by the Commission for all NBFCs in general or for an NBFC in particular.

(2) The Commission may specify any other capital adequacy requirements in addition to the minimum equity requirements for any regulated forms of business.

(3) The Commission may specify any other financial resource requirements in lieu of minimum equity requirements for any regulated form of business.

(4) No NBFC incorporated outside Pakistan shall be deemed to have complied with the provisions of sub-section (1) unless it complies with the requirements as specified by the Commission.

**28. Appointment of directors, chief executive and key executives by an NBFC.-** (1) An NBFC shall not appoint or change its chief executive or any of its directors without prior written approval of the Commission.

(2) The appointment of directors, chief executive and key executive shall be subject to fulfillment of fit and proper criteria as may be specified.

(3) NBFCs shall comply with the requirements of number and type of directors as may be specified.

**29. Determination of “fit and proper”.-** (1) The Commission shall specify the fit and proper criteria for promoters, majority shareholders, directors, chief executive and key executives of NBFCs.

(2) In considering whether a promoter, a major shareholder, a chief executive, a member of the board of directors or key executive is fit and proper person for the purposes of this Act, the Commission shall, in addition to any other matter that the Commission may consider relevant, have regard to—

- (i) the financial status or solvency;
- (ii) the educational or other qualifications or experience;
- (iii) the ability to carry on their activity competently, honestly and fairly; and
- (iv) the reputation, character, reliability and financial integrity.

(3) Without limiting the generality of sub-section (2), the Commission may, in considering whether a promoter, a major shareholder, a chief executive, a member of the board of directors and key executive of NBFCs is a fit and proper person, take into account any information in the possession of the Commission whether provided by the NBFC or not.

(4) For the purpose of this Section, the decision of the Commission with respect to the fitness and propriety of a person shall be final.

**30. Restrictions on NBFC .-** (1) An NBFC may form or invest in any subsidiary company subject to such terms and conditions as may be specified..

(2) An NBFC shall not hold (except as is required by it for its own use) any immovable property subject to terms and conditions specified.

**31. Fund raising by lending NBFCs.-** A lending NBFC may raise funds, in addition to other sources, in the form of deposits through issuance of certificates of investment subject to the fulfillment of the terms and conditions as may be specified.

**32. Systems and Control Procedures.-** (1) An NBFC or collective investment vehicle shall establish effective systems and control procedures with respect to their licensed regulated activity to ensure viability of business operations, effective risk management and compliance with the regulatory framework.

(2) The Commission may conduct inspection of a person, at applicant's cost and expense, which submits application for incorporation of NBFC or registration as a collective investment vehicle or grant of license for any regulated form of business to ascertain the effectiveness of its systems and controls or management quality or any other matter related with the incorporation of NBFC or registration as a collective investment vehicle or grant of license.

## **PART VII**

### **ACCOUNTS AND AUDIT**

**33. Books of account to be kept.-** (1) Every NBFC and collective investment vehicle shall maintain proper books of account which shall sufficiently explain the transaction and financial position of the NBFC and collective investment vehicle and enable to prepare financial statements, which give a true and fair view of the state of the affairs of the NBFC and collective investment vehicle.

(2) Without limiting the generality of sub-section (1), such books of account and financial statements shall be maintained and prepared in accordance with applicable financial reporting standards or in a manner as may be specified.

(3) Every NBFC and collective investment vehicle shall maintain books of account relating to a period of not less than ten financial years immediately preceding current financial year.

**34. Audited financial statements to be filed with the Commission.-** (1) An NBFC or collective investment vehicle, shall —

- (a) for the financial year from the day on which it commences to carry on a regulated activity or activities; and
- (b) for each subsequent financial year,

prepare financial statements, made up to the last day of the financial year and shall file these financial statements with the Commission not later than 120 days after the end of the financial year, together with an auditor's report in such manner as may be specified.

(2) An NBFC or collective investment vehicle, shall submit to the Commission its quarterly financial statements within one month of the close of first and third quarter and within two months from the close of second quarter.

**35. Auditor to be appointed.-** (1) Within one month after becoming licensed under this Act, an NBFC shall appoint an auditor subject to terms and conditions specified.

(2) An NBFC shall, within one month from the date of launch of a collective investment vehicle, appoint an auditor for such collective investment vehicle from a panel of auditors as referred in sub section(1).

## **PART VIII**

### **DISCIPLINARY PROCEEDINGS**

**36. Disciplinary actions in respect of regulated person.-** (1) Without prejudice to anything contained in any other provision of this Act, where the Commission is satisfied that—

- (i) to prevent the affairs of the NBFC or the collective investment vehicle being conducted in a manner detrimental to the interest of the shareholders or depositors or unit holders or in a manner prejudicial to the interests of the NBFC or collective investment vehicle; or

- (ii) continued association of chairman, chief executive or director or any other person by what so ever name called, of the NBFC or collective investment vehicle is likely to be detrimental to the interests of the NBFC or the collective investment vehicle or depositors or shareholders or unit holders of collective investment vehicle or persons whose interest is likely to be affected; or
- (iii) to secure proper management of the NBFC or the collective investment vehicle; or
- (iv) the public interest so demands,

and it is necessary so to do, the Commission may, for reasons to be recorded in writing, by order:

- (a) remove from office, with effect from such date as may be specified in the order, any chairman or chief executive, officer or any other person affiliated with the NBFC or collective investment vehicle;
- (b) declare unfit any person involved for maximum up to 10 years to hold an office in any NBFC in whatsoever capacity;
- (c) suspend his license or registration whether in relation to all or any of its activities for which he is licensed or registered, for such period or until the occurrence of such event as the Commission may deem fit; or
- (d) cancel his license or registration, whether in relation to all or any of its activities for which he is licensed or registered.

(2) No order under clauses (a) and (b) of sub-section (1) shall be made unless the chairman, chief executive, or officer or the key executive or any other person affiliated with the NBFC or collective investment vehicle has been given an opportunity of making a representation and of being heard:

Provided that where the Commission is satisfied that delay in taking action under clauses (a) and (b) sub-section (1) shall be detrimental to the interest of NBFC, collective investment vehicle, depositors, shareholders, unit holders of collective investment vehicle or the public in general, the Commission after recording reasons in writing immediately take action till the time



an opportunity of hearing is provided and a final decision shall be taken within a period of not more than sixty days, and by order direct that—

(i) the chairman or, director or chief executive or key executives shall not, with effect from the date of the order—

(a) act as chairman or director or chief executive or key executive of the NBFC;  
or

(b) in any way, whether directly, or indirectly, be concerned with, or take part in the management of the NBFC or collective investment vehicle;

(ii) any person authorized by the Commission in this behalf shall act as chairman or director or chief executive or any key executive-of the NBFC till another person is appointed in such manner, as may be directed by the Commission, to fill in the vacancy.

(3) Where any order under clauses (a) and (b) of sub-section (1) is made in respect of a chairman, director, chief executive or a key executive of a NBFC, he shall cease to be a chairman, a director, chief executive or key executive of the NBFC and shall not in any way, whether directly or indirectly, be concerned with, or take part in, the management of the NBFC or collective investment vehicle or any other NBFC or collective investment vehicle for such period not exceeding three years as may be specified in the order.

(4) Any person appointed as chairman or director or chief executive under clause (ii) of sub-section (2) shall—

(i) hold office subject to such conditions and for such period not exceeding three years, as the Commission may specify in the order;

(ii) not incur any obligation or liability for anything which is done or intended to be done in his capacity as chairman or director or chief executive.

(5) No person removed from office under sub-section (1) shall be entitled to claim any compensation for the loss or termination of office.

(6) Where the Commission is satisfied that the association of the Board of Directors of any NBFC or a collective investment vehicle is or is likely to be detrimental to the interest of the

NBFC or a collective investment vehicle or shareholders or unit holders or is otherwise undesirable; or for all or any of the reasons specified in sub-section (1); it is necessary so to do, the Commission may, for reason to be recorded in writing, by order, supersede the Board of Directors of a NBFC or a collective investment vehicle with effect from such date and for such period as may be specified in the order.

(7) The period of supersession specified in an order under sub-section (6) may from time to time be extended by the Commission provided that total period of supersession does not exceed three years.

(8) All powers and duties of the Board of Directors; shall, during the period of supersession, be exercised and performed by such person as the Commission may from time to time appoint in this behalf.

(9) The provisions of sub-sections (2), (3), (4) and (5) of this section shall, with necessary modifications apply to an order made under sub-section (1) of this section

**37. Suspension or cancellation of license or registration.-** (1) Where order is made where the Commission is satisfied that delay in the suspension of license cause serious financial damage to the depositors, unit holders of the collective investment vehicle and other stakeholders or is detrimental to the interest of investors or the public in general, the Commission may, after recording reasons in writing, immediately suspend its license or registration under clause (c) and (d) of sub-section (1) till the time an opportunity of hearing is provided to the NBFC and a final decision is taken within a period of not more than sixty days.

(2) Upon cancellation of all the licenses or registrations, the functions and carrying on the business of NBFC or the collective investment vehicle shall cease and notwithstanding anything contained in section 301 or sub-clause (c) of the proviso to section 304 of Companies Act, 2017 (XIX of 2017), the Commission may move the Court for winding up of the NBFC.

(3) Where a NBFC or a collective investment vehicle or any other person licensed or registered under this Act carries on the business after its license or registration has been suspended or cancelled by the Commission, the chief executive, by whatever name called, and every director, manager, and other officer as the case maybe, who is responsible for such default, shall be punishable under sub-section (4) of section 4.

(4) The Commission may in addition to any other powers available to it under this Act, exercise any power as provided in PART IXA of Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997).

**38. Power to ensure viable operations of the NBFCs.-** (1) The Commission, if satisfied, may require any NBFC, by an order in writing stating reasons, to increase its equity by such amount and within such period as may be specified in the order and the Commission shall exercise the power reasonably, fairly and justly.

(2) Notwithstanding any provisions contained in any other law for the time being in force-

- (i) if the Commission has determined that a person is holding or is a beneficial owner of five percent or more shares of a NBFC without prior approval of the Commission or a person that acquired shareholding with prior approval of the Commission subsequently fails to meet the fit and proper test as the Commission may, by an order in writing stating reasons, require such person to reduce, divest or transfer to a fit and proper person, his shareholding within such reasonable period and in such manner as may be specified in the order;
- (ii) where a person holding five percent or more shares of an NBFC is or is likely to be detrimental to the interest of the financial market or NBFC or its depositors, the Commission may, by an order in writing stating reasons, require such person to divest his shareholding to a fit and proper person. The Commission shall exercise the power reasonably, fairly and justly; and
- (iii) 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 Commission against the proposed order.

(3) Where the Commission is of opinion that any delay would be detrimental to the public interest or the interest of the NBFC, the Commission 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.

- (4) The interim order referred in sub-section (3) may include prohibition of-
- (a) transfer of, or the carrying out of the agreement or arrangement to transfer such shares;
  - (b) the exercise of voting rights in respect of such shares;
  - (c) the payment of cash or stock dividends in respect of such shares; and
  - (d) the issue of further shares to the concerned shareholder;

(5) Where direction given under clause (a) or clause (b) is not complied with, the Commission may dispose of such shares either through stock exchange or public auction and the proceeds of such shares, after deduction of any expenses incurred by the Commission, shall be paid to the respective shareholders within a period of three months and where necessary, the Commission may require--

- (a) issuance of duplicate shares in place of the original shares; and
- (b) the Central Depository Company to make appropriate changes in their records; and

(6) Any person aggrieved by the decision of the Commission under clauses (i) and (ii), of sub-section (2) of this Section may prefer appeal to the Appellate Bench of the Commission 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 Appellate Bench.

## **PART IX**

### **OFFENCES, PROSECUTION AND PENALTIES**

**39. Offences and Penalties.** (1) Where a NBFC or collective investment vehicle or any person licensed or registered under this Act or any of their officers (including auditors) fails or refuses to comply with, or contravenes any provision of this Act except for the offences for

which punishment of imprisonment or imprisonment in additions to or in lieu of fine is provided, or rules or regulations made thereunder or order or directives or circular passed by the Commission and knowingly authorizes or permits such failure, refusal or contravention, shall, in addition to any other liability under this Act, also be liable to a penalty not exceeding one hundred millions rupees:

(2) Where the failure, negligence, refusal, default, contravention is committed by NBFC or the collective investment vehicle or any of its officer or any other person licensed or registered under this Act, every such NBFC or collective investment vehicle or any officer responsible for the conduct of its affairs shall, unless he proves that the failure or contravention or default took place or committed without his knowledge, or that he exercised all diligence to prevent its commission, be deemed to be jointly and/or severally guilty of the offence.

(3) Notwithstanding anything contained in this Act, if any person, being the chairman, director, chief executive or any other officer, by whatever name called or a person not being a professional advisor in accordance with whose directions or instructions the directors are accustomed to act, or official liquidator or any officer of a NBFC or a collective investment vehicle in any document, prospectus, report, return, accounts, information or explanation required to be furnished in pursuance of this Act or the rules or regulations made thereunder, willfully makes a statement which is false in any material particular knowing it to be false, or willfully omits to make a material statement, mismanages the affairs of the NBFC or a collective investment vehicle or misuses his position for gaining direct or indirect benefit for himself or any of his family members, he shall be an offence punishable with imprisonment for a term which may extend to three years and shall also be liable to fine which shall be not less than one hundred thousand rupees, and shall be ordered by the court trying the offence, to deliver up or refund within a time to be fixed by the court any property acquired or gained by him in his own name or in the name of his family members by so mismanaging the affairs of the NBFC or a collective investment vehicle or misusing his position or, in default, to suffer imprisonment for a term which may extend to three years.

**40. Penalty to be imposed by the Commission.-** Wherever a penalty is provided for any offence, contravention of, or default in complying with, any of the provisions of this Act, rules or regulations made under this Act, such penalty shall be imposed by the Commission after providing a reasonable opportunity of hearing.

**41. Cognizance of offences and prosecution.-** All prosecution of offences against any person under this Act shall be conducted in accordance with the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997).

## **PART X**

### **MISCELLANEOUS**

**42. Power of the Commission to issue directions, circular, guidelines, notification.-**

(1) Where the Commission considers it necessary or expedient, in public interest or for the protection of investors or public interest may issue directions, circulars, guidelines or notifications to carry out the purposes of this Act.

(2) Without prejudice to the generality of sub-section (1), where the Commission is of the view that –

- (i) to prevent the affairs of any NBFC or collective investment vehicle from being conducted in a manner detrimental to the interests of depositors or shareholders or unit holders as the case may be, or persons whose interests are likely to be affected or in a manner prejudicial to the interests of the NBFC or collective investment vehicle; or
- (ii) to secure the proper management of any NBFC or collective investment vehicle generally,

it may issue such directions to NBFCs or collective investment vehicle generally or to any NBFC or collective investment vehicle or association of NBFCs in particular to do or desist from doing such acts as the Commission may deem fit and to carry out such changes as are necessary to rectify the situation and the NBFCs or collective investment vehicle shall be bound to comply with such directions.

**43. Power to make rules.-** The Federal Government may, by notification in the official Gazette, make rules to carry out the purposes of this Act:

Provided that, before making any such rule, the draft thereof shall be published in the official Gazette for eliciting public opinion thereon within a period of not less than fourteen days from the date of publication.

**44. Power to make Regulations.-** The Commission may, by notification in the official Gazette, make regulations to carry out the purposes of this Act:

Provided that, before making any such regulations, the draft thereof shall be published in the official Gazette for eliciting public opinion thereon within a period of not less than fourteen days from the date of publication.

**45. Payment of fee.-** An NBFC, collective investment vehicle, trustee of collective investment vehicles and distributors of collective investment vehicles shall pay such non-refundable fee as specified by the Commission through notification in the official Gazette.

**46. Exchange of information.—**(1) NBFCs or collective investment vehicles may exchange on confidential basis amongst themselves, either directly or through any other person providing credit information services, information about their respective clients.

(2) No suit or other legal proceeding shall lie against NBFCs or collective investment vehicles for anything which is in good faith done in pursuance of this section or for any damage caused or likely to be caused by anything done or intended to be done as aforesaid.

**47. Prevention of NBFCs involvement in money laundering, terrorist financing and other illegal trades.-** All NBFCs shall ensure compliance with all the applicable laws, rules or regulations, directives and circulars with regards to money laundering, terrorist financing and other illegal trades.

**48. Duty of utmost good faith.-** All the transactions performed by NBFCs and collective investment vehicles shall be based on utmost good faith and it shall be implied in such a contract a provision requiring each party to it to act towards the other party, in respect of any matter arising under or in relation to it, with the utmost good faith.

**49. Bar on engagement in misleading or deceptive conduct.-** (1) NBFC or collective investment vehicle shall not, in the course of their business, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

(2) Where a depositor or unit holder of collective investment scheme has relied upon any representations by NBFC or collective investment vehicle including any of their employees which are incorrect in any material particular, inasmuch as it has the effect of misleading or deceiving the depositor or unit holder shall be entitled to obtain compensation from the NBFC or collective investment vehicle for any loss suffered.

(3) Notwithstanding the provisions of the foregoing sub-section (2), the Commission shall also have the power to levy a fine on the NBFC which shall be equal to the twice the loss determined to be suffered by the depositor or unit holder under the foregoing subsection.

**50. Act to override other laws.-** The provisions of this Act shall have effect notwithstanding anything contained any other law for the time being in force including Microfinance Institutions Ordinance, 2001, (LV of 2001).

**51. Removal of difficulties.-** If any difficulty arises in giving effect to any provision of this Act, the Federal Government may, by notification in the official Gazette, make such provisions as may appear to it to be necessary for the purpose of removing the difficulty.

**52. Repeal and Savings.-** (1) Part VIIIA of the Companies Ordinance, 1984 (XLVII of 1984) and section 457 of the Companies Act, 2017 (XIX of 2017) shall, hereinafter called as repealed Ordinance and section, stand repealed from the date of coming into force of this Act:

Provided that repeal of repealed Ordinance and section shall not—

- (a) revive anything not in force at the time at which the repeal takes effect; or
- (b) affect the previous operation of the repealed Ordinance and section or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the said repealed Ordinance and section; or



- (d) affect any penalty imposed, forfeiture made or punishment awarded in respect of any offence committed under the repealed Ordinance and section;
- (e) affect any inspection, investigation, prosecution, legal proceeding or remedy in respect of any obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such inspection, investigation, prosecution, legal proceeding or remedy may be made, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed.

(2) Notwithstanding the repeal of the repealed Ordinance and section -

- (a) every notification, order or directive, circular, code or guideline or exemption, application, issued, made or granted under the repealed Ordinance and section shall have effect as if it had been issued, made or granted under the corresponding provision of this Act;
- (b) any official appointed or anybody elected or constituted under repealed Ordinance and section shall continue and shall be deemed to have been appointed, elected or constituted, as the case may be, under the corresponding provision of this Act;
- (c) any document referring to any provision of the repealed Ordinance and section shall be construed as referring, as far as may be, to this Act, or to the corresponding provision of this Act;
- (d) mortgages recorded in any register or book maintained under the repealed Ordinance and section shall be deemed to have been recorded in the register or book maintained under the corresponding provision of this Act;
- (e) any permission, certificate or document issued, made or granted under the repealed Ordinance and section shall be deemed to have been issued, made or granted under this Act and shall, unless cancelled, in pursuance of any provisions of this Act, continue to be in force until the date specified in the permission, certificate or document.

(3) An NBFC or collateral management company which, immediately prior to the commencement of this Act, is licensed as an NBFC under Part VIIIA of the Companies Ordinance

(XLVII of 1984) or registered as collateral management company under section 457 of the Companies Act, 2017 (XIX of 2017) shall be deemed to be licensed or registered, as the case may be, under this Act as an NBFC unless its license is cancelled by the Commission.

(4) If a previously licensed NBFC or registered collateral management company, as the case may be, has failed to meet the licensing requirements for a period of 2 consecutive years without express approval from the Commission, its license or registration, as the case may be, shall stand cancelled from the date of coming into force of this Act.

(5) A collective investment vehicle which is registered with the Commission under Part VIIIA of the Companies Ordinance (XLVII of 1984) as a notified entity shall be deemed registered as a collective investment vehicle under section 13 of the Act unless their registration is cancelled by the Commission.

(6) From the commencement of this Act, all rules and regulations made by the Federal Government or the Commission, as the case may be, under the Companies Ordinance (XLVII of 1984) or section 457 of the Companies Act, 2017 (XIX of 2017) and which are in force immediately prior to the commencement of this Act, which have not been amended or repealed under this Act, shall continue to be in force and have effect as if they have been made by the Federal Government or the Commission, as the case may be, under this Act.

(7) Any condition that has been attached by the Commission to an NBFC or collective investment vehicle or collateral management company under the Companies Ordinance (XLVII of 1984) or Companies Act, 2017 (XIX of 2017) as the case may be, and that is in force immediately prior to the commencement of this Act, shall be treated as being attached to any license or registration which is regarded as subsisting by virtue of these transitional provisions.

(8) Anything done, actions taken, instruments made, proceedings initiated, instituted, processes or communications issued and powers conferred, assumed or exercised and authorization given under Part VIIIA of the Companies Ordinance (XLVII of 1984) or under the Companies Act, 2017 (XIX of 2017) in relation to or in connection with section 457 of the Companies Act, 2017 (XIX of 2017) shall, on the coming into operation of this Act, be deemed to have been validly done, made, taken, initiated, conferred, assumed, given and exercised.