



**SECURITIES AND EXCHANGE
COMMISSION OF PAKISTAN
(SPECIALIZED COMPANIES DIVISION)**

MODARABA PROMOTERS' GUIDE

**FORMATION OF MODARABA MANAGEMENT
COMPANY AND FLOATATION OF MODARABAS
UNDER THE MODARABA COMPANIES AND
MODARABA (FLOATATION AND CONTROL)
ORDINANCE, 1980**

REQUIREMENTS FOR REGISTRATION AS MODARABA COMPANY

In order to be eligible for registration as Modaraba Company, the following conditions have to be fulfilled:

- (a) The Company should be registered under the Companies Ordinance, 1984 or be a body corporate formed under any law in force and owned or controlled whether directly or through a company or Corporation by the Federal Government or a Provincial Government.
- (b) If a Company is to be engaged solely in the floatation and management of modaraba, it has to have a paid-up capital not less than Rs.2.5 million but if it is engaged in other business as well then its paid up capital should be minimum Rs.7.5 million.
- (c) None of its directors, officers or employees has been convicted of fraud or breach of trust or of an offence involving moral turpitude.
- (d) None of its above quoted persons should have been adjudged an insolvent or have suspended payment or compounded with their creditors.
- (e) The promoters should, in the opinion of Registrar, be persons of means and integrity and have knowledge of matters, which the company may have to deal with as Modaraba Company.
- (f) The promoters, CEO/Directors and other key executive fulfill the Fit & Proper Criteria prescribed by the SECP.

APPLICATION FOR REGISTRATION

A company which is eligible for registration as Modaraba Company may make an application to the Registrar duly signed by all directors and verified by an Oath Commissioner with:

- (i) 5 copies of Memorandum and Articles of Association of the Company; (One copy which should be certified by the Registrar of respective Company Registration Office).
- (ii) 5 copies of Certificate of Incorporation of the company (one copy of which should be certified by the Registrar of respective Company Registration Office).
- (iii) Original depositor's Challan of Rs. 250,000/- on account of registration and filing fee (non-refundable) deposited in the head of account of the Securities and Exchange Commission of Pakistan maintained in the designated branches of MCB Bank Limited.
- (iv) Latest audited accounts, if the company is already in business.
- (v) Precise description of the business being done, if the company is already engaged in business other than floatation of modaraba or if it proposes to undertake such business in addition to floatation and management of Modaraba.

After an application has been made for registration, the Registrar, may after being satisfied grant registration to such companies on such conditions as he may deem fit.

OTHER IMPORTANT REQUIREMENTS AFTER REGISTRATION

- (i) No Modaraba Company shall engage in any business which is of the same nature and competes with the business carried on by a Modaraba floated or controlled by it [Section 17(1)].
- (ii) No Modaraba Company or any of its directors or their relatives shall obtain loan, advance or credit from the funds of the Modaraba or on the security of the assets of the Modaraba [Section 17 (2)].
- (iii) The Modaraba Company shall subscribe at least 10% of the total amount of subscription in each Modaraba floated by it. In order to compensate it, it has been laid down that the Modaraba Company will get as remuneration a fixed percentage of the net annual profit of the Modaraba which shall not exceed 10% of such net annual profit [Section 17 (3), 18].

- (iv) A fee of Rs. 25, 000/- shall be remitted by Modaraba Company through Challan as annual renewal fee in the month of January every year.
- (v) Annual audited accounts, director's report and auditor's report of the company are required to be filed with the Registrar simultaneously with its circulation to share holders.
- (vi) No change, in the Memorandum and Articles of Association or in the majority shareholders and directors, shall be made without prior written authorization of the Registrar.

PERMISSION TO FLOAT A MODARABA

A duly registered Modaraba Company can apply for floatation of a Modaraba (section 8).

Documents to be furnished to the Registrar for the grant of permission to float a Modaraba.

Five copies each of:

- (i) Application for the grant of permission to float Modaraba on Form No. 1 with other necessary information required in the annexure to the Form.
- (ii) Duly certified copies of registration certificate, one copy thereof being certified by the Registrar.
- (iii) Prospectus and feasibility report duly signed by all directors.
- (iv) Latest audited balance sheet and profit and loss account of Modaraba Company and existing Modaraba, if any.
- (v) Original depositor's challan on account of authorization fee to float Modaraba, deposited in the head of account of the Securities and Exchange Commission of Pakistan maintained in the designated branches of MCB Bank Limited.

RELIGIOUS BOARD

The Registrar scrutinizes the application and after he is satisfied, submits it to the Religious Board for issue of a certificate on the prescribed Form.

FLOATATION OF MODARABA

The Registrar can grant authorization certificate to float a modaraba only after clearance of the proposal by the Religious Board.

DECLARATION BEFORE COMMENCING BUSINESS

The Modaraba cannot commence business till the minimum amount stated in the prospectus for business operation has been raised, the Modaraba certificates thereof have been allotted and a declaration as prescribed in this regard signed by Chief Executive has been filed with the Registrar.

IMPORTANT REQUIREMENTS AFTER FLOATATION OF MODARABA

- (i) Five copies of its annual audited accounts signed by the chief executive and two directors of the Modaraba Company are required to be filed with the Registrar and circulated amongst certificate holders within six months from the close of the accounting year (section 14, Rule 12).
- (ii) Terms of an auditor appointed by the Modaraba Company as auditors of Modaraba shall be approved by Registrar (Section 15, Rule-19).
- (iii) Every modaraba company shall, within one month of the close of first, second and third quarters of the financial year of each modaraba, prepare in accordance with such International Accounting Standards and other standards, as may be specified from time to time by notification in the official Gazette for the purpose by the Securities and Exchange Commission of Pakistan under sub-section (3) of section 234 of the Companies Ordinance, 1984, (XLVII of 1984), and transmit by registered post to the Registrar and under postal certificate to its certificate holders a profit and loss account, a cash flow statement and a statement of

changes in equity for, and a balance sheet as at the end of, that quarter, whether audited or otherwise (Rule 10).

- (iv) Annual list of certificate holders and a summary shall be prepared within eighteen months from the floatation of the Modaraba and filed with the Registrar within 30 days from the date of the reopening of the Register of the certificate holders relative to declaration of dividend, otherwise as on 31st December of the year [Rule-23].
- (v) Return as to allotment of Modaraba Certificates shall be filed with the Registrar within one month from the floatation of Modaraba. (Rule-26).
- (vi) The Modaraba shall be floated within twelve months from the date of authorization.
- (vii) The Modaraba shall not undertake any business other than those specified in the prospectus.
- (viii) The Modaraba Company shall not disinvest or create encumbrance in favour of any person on any part of the investment in the Modaraba.
- (ix) The Modaraba certificates shall be listed for trading on stock exchange. If the application for listing of the Modaraba is refused by the Stock Exchange, the company shall forthwith repay the money received by it from the applicants.
- (x) The Modaraba certificates to be subscribed by the Management Company and/or sponsors, of the Modaraba Company shall not be transferred except with the prior written authorization of the Registrar.
- (xi) No change shall be made in the chief executive officer, directors of the Modaraba Company or management of the modaraba except with the prior written consent of the Registrar.
- (xii) A report about the public offer and subscription, allotment basis, fulfillment of underwriting obligations and related matters shall be furnished to the Registrar within two months of the date of publication of the prospectus.

- (xiii) Dates of opening and closing of subscription list as agreed by the stock exchange shall be incorporated in the prospectus. If these dates go beyond three months of the date of authorization certificate, then the prospectus shall be cleared afresh before publication.
- (xiv) Underwriting arrangement shall be finalized with the approval of the Registrar.
- (xv) The Modaraba Company shall comply with the conditions, if any, imposed by the SEC.
- (xvi) The prospectus shall be published in the press not less than seven days and not more than thirty days before the date on which the subscription list will open.
- (xvii) The Modaraba Company shall take a decision within ten days of the closure of subscription list as to what applications have been accepted, and shall refund, within ten days of decision, the application money to the applicants whose applications have not been accepted.
- (xviii) Dates of execution of material contracts shall be incorporated in the prospectus and verified photo copies thereof submitted to the Registrar before issue/publication of the prospectus.
- (xix) A duly signed final copy of the prospectus containing original certificate of the Auditors shall be filed with the Registrar before issue/publication of the prospectus.
- (xx) The company shall set aside for each Modaraba, free from any encumbrance, a portion of its paid-up capital not less than two and a half million rupees.
- (xxi) The objects outlined in the prospectus shall be achieved and the business operation conducted on the basis of business arrangements and agreements as already approved by Religious Board. In case any new arrangement is to be entered into, approval of the Religious Board shall be obtained.
- (xxii) The scheme for further issue (Right or Bonus) of Modaraba Certificates shall be approved from Registrar after the decision made by the Board of Directors.

(xxiii) The contents of the "prospectus" shall not be altered without prior written approval of the Registrar.

(xxiv) Five published copies of the "prospectus" along with copies of all newspapers in which prospectus has been advertised shall be filed with the Registrar within seven days of its publication.

REQUIREMENT UNDER PRUDENTIAL REGULATIONS

- i) All business transactions undertaken by the Modarabas shall be in conformity with the Prudential Regulations for Modarabas, issued under Circular No.4 of 2004 dated January 28, 2004 amended from time to time.
- ii) The affairs of the Modarabas shall be monitored under the Prudential Regulations for Modarabas through various periodical statements through the Specialized Companies Return System (SCRS) by the 10th of every month.

GUIDELINES FOR EXISTING AS WELL AS PERSPECTIVE APPLICANTS AS DETERMINED BY REGISTRAR MODARABA FROM TIME TO TIME

- a) The appointment of key Executives including the chief executive officer, chief financial officer, chief accounting officer, chief operating officer, company secretary, internal auditor or the compliance officer irrespective of their designation shall be subject to Fit & Proper Criteria prescribed by the Registrar Modaraba.
- b) Chief Executive Officer shall not be removed without the permission of the Registrar Modaraba.
- c) The reputation of the applicants' proposed chief executive will be given due weightage.
- d) The sponsor/director must have clean records (if connected with corporate bodies) in respect of transactions with the Banks and DFIs and payment of income tax, excise and custom duties and sales tax. More particularly they should not:

- i) have been associated with any illegal activity especially banking business, deposit taking, financial dealing and other business.
 - ii) have failed to meet their obligation to banks and other financial institutions. They shall furnish names of the banks/DFIs along with names of the branches with which they have had dealing. Bank reports are also required to be submitted.
 - iii) have defaulted in payment of taxes. They shall indicate their National Tax Numbers.
 - iv) be or have been associated as director/chief executive with the corporate bodies whose corporate and tax record including custom duties, central excise and sales tax has been unsatisfactory. They shall name the corporate bodies, their bankers and disclose their tax numbers and dividend record. Those not so associated with corporate bodies would be required to indicate their occupation/profession/trade and highlight their achievements.
 - v) have been sponsor, director, major shareholder or chief executive of a cooperative society, which has failed to meet its obligations.
 - vi) in the opinion of the sanctioning authority, having adverse reputation regarding integrity and performance and do not fulfill the Fit & Proper Criteria circulated vide circular No.10 of 2008 dated 2.6.2008.
- (g) Sponsors/directors should have personal net worth not less than the amount to be subscribed by them personally supported by a duly authenticated copy of the latest wealth statement filed with the taxation department.
- (h) Persons with directorship of listed companies paying dividend regularly will be preferred against those having directorship of non-listed public or private limited companies. Similarly, business groups who have gone in public will be preferred.
- (i) A chairman, chief executive officer or director shall represent only one modaraba company so as to avoid conflict of interest. Exceptional cases can be considered on merit.

- (j) More than 50% of sponsors/directors shall not be from the same family.
- (k) For both general and specific Modarabas at least 50% of the directors should have either experience of funds management or that of directorship of listed companies.
- (l) The promoters and sponsors of the modaraba company and modaraba shall not dispose of their shares and modaraba certificates without the prior written approval of the registrar modaraba.
- (m) Existing as well as future management companies are required to have a Chartered Accountant or an FCMA as their chief accountant.
- (n) Applicant Company's past financial track record, tax track record, corporate behavior and professional reputation of proposed sponsors will be given weightage.
- (o) No second Modaraba will be allowed unless accounting results of three years of the previous modaraba are available.
- (p) Applications for registration as a Modaraba Company sponsored by people not related to each other will be given preference over application sponsored by people belonging to the same family.

Note: the criteria desired is the minimum and can be reviewed and changed to encourage growth of modaraba sector.

SCALE OF FEES UNDER THE MODARABA COMPANIES AND MODARABA RULES, 1981

1.	For registration of a modaraba company (non-refundable fee):			
	(i) at the time of registration.			Rs.250,000/-
	(ii) renewal annually in the month of January.			Rs.25,000/-
2.	Application for:	Perpetual	More than five years	Up to five years
	(a) authorization to float modaraba (non-refundable fee):	(1)	(2)	(3)
	Where the nominal amount does not exceed Rs.2.5 million	Rs.50,000/-	Rs.40,000/-	Rs.30,000/-
	Where the nominal amount exceeds Rs.2.5 million but does not exceed Rs. 5 million	Rs.100,000/-	Rs.60,000/-	Rs.40,000/-
	Where the nominal amount exceeds Rs.5 million	Rs.100,000/- plus Rs.10,000/- for every additional Rs.1 million.	Rs.60,000/- plus Rs.6,000/- for every additional Rs. 1 million.	Rs.40,000/- plus Rs.4,000/- for every additional Rs. 1 million
	(b) renewal annually in the month of January (to be charged to the Modaraba)			Rs. 100,000/-
3.	For filing, recording or registering any fact or document or fact required to be filed with, recorded by or registered with Registrar.			Rs.1,000/- for each document
4.	For filing, registering and recording document relating to a mortgage or charge required under the Ordinance.			Rs.7,500/-
5.	For application for enquiry.			Rs.2,000/-
6.	For claim against modaraba company by modaraba certificate holders referred to the Tribunal.			Rs.2,000/-
7.	For any other application before the Tribunal, other than an application by Registrar, or before the Registrar by any person.			Rs.2,000/-
8.	For inspection of records.			Rs.200/-
9.	For certified copy of any document or extract thereof.			At the rate of Rs.20/- per page or part thereof subject to a minimum of Rs.100/- ".