



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN  
SPECIALIZED COMPANIES DIVISION  
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT  
(MODARABA WING)

No. SC/M/MS/KASB/2016-146

November 14, 2016

**The Chief Executive,**

KASB Invest (Pvt.) Limited,  
Managers of KASB Modaraba,  
8-C, Block-6, PECHS, Off Shahrah-e-Faisal,  
Karachi.

**Subject: ORDER IN RESPECT OF THE SHOW CAUSE NOTICE DATED OCTOBER 5, 2016  
BEARING NUMBER SC/M/PRDD-ADJ/KASB/2016-94**

Dear Sir,

I am directed to forward herewith a copy of the Order passed by the Registrar Modaraba dated November 14, 2016 in the title matter for compliance and necessary action.

2. I am also directed to advise you to submit an undertaking duly signed by all the Board's members including the Chief Executive stating that meticulous compliance of the regulatory framework for modarabas shall be ensured and that they will be liable to any loss to the certificate holders owing to the weak system and controls and non-compliance of the law. The requisite undertaking must reach this office within five days from the date of receipt of this letter.
3. You are required to furnish the following information on monthly basis:
  - (i) A performance report detailing the targets and achievements of the Chief Operating Officer (COO) of KASB Modaraba.
  - (ii) Details of the administrative expenses incurred on the perks and privileges of the COO, paid from the Modaraba Fund.
4. Further, please provide the ruling of the *Shari'ah* Advisor of KASB Modaraba that appointing a major shareholder of the Modaraba Company (*Modarib*) as COO of the Modaraba does not involve any *Shari'ah* issues. Prior to forwarding the request to the *Shari'ah* Advisor, please share its details with us.
5. In addition to the above, please also apprise this office about the efforts made and actions taken by the Modaraba Company to strengthen the systems and controls in KASB Modaraba to avoid any re-occurrence of regulatory non-compliance, especially those which have been mentioned in the Order.
6. The requisite monthly report shall be submitted to this office within seven days from the close of each month.

Yours truly,

(Muhammad Jahangir)

Joint Director



No. SC/M/PRDD-ADJ/KASB/2016- 145  
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN  
SPECIALIZED COMPANIES DIVISION  
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT  
MODARABA WING

Order  
In the matter of

KASB Invest (Pvt.) Limited  
Managers of KASB Modaraba

Show Cause Notice No.

No. SC/M/PRDD-ADJ/KASB/2016-94

Dated:

October 05, 2016

Date of Hearing:

October 20, 2016

Submissions by:

1. Mr. Rashid K. Siddiqui,  
Chief Executive, KASB Invest (Pvt.) Limited,
2. Mr. Farrukh S. Ansari,  
Director, KASB Invest (Pvt.) Limited,

ORDER UNDER SECTION 20 OF THE MODARABA COMPANIES AND MODARABA (FLOTATION AND CONTROL) ORDINANCE, 1980

KASB Invest (Pvt.) Limited ("the Modaraba Company"), is managing KASB Modaraba, ("KASBM"). The Modaraba Company was issued a show-cause Notice dated October 05, 2016 ("the Notice") under section 20 of the Modaraba Companies and Modaraba (Flotation & Control) Ordinance 1980 ("the Modaraba Ordinance").

2. As per the Notice, the Modaraba Company increased the gross salary of Mr. Mahmood Ali Shah Bukhari, Chief Operating Officer ("COO") who is also the major shareholder of the Modaraba Company from Rs. 194,000 to Rs. 344,000 per month i.e. by 77% without observing the prescribed procedure resulting in mismanagement of the modaraba funds. Moreover, four staff members were inducted as Vigilance Officers ("VO"). As per the payroll system, KASBM paid an amount of Rs. 1.45 million to these VOs during the period from July, 2014 to December, 2015. The management of KASBM failed to produce any documentary evidence that the persons were appointed for vigilance of godown and their biometric attendance record was also not available. Furthermore, Ms. Sana Masood was appointed KASBM as Vice President ("VP") on December 1, 2014 despite the fact that the position of VP was not mentioned in HR manual of KASBM. No



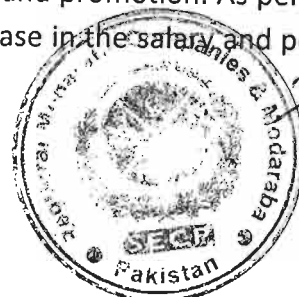
documentary evidence was available showing that Ms. Sana was performing any duties in KASBM. It was revealed that she was working for the KASB group instead of KASBM. The scrutiny of the attendance record also revealed that her name was not included in the biometric attendance sheet of KASBM for the period from July – December, 2015. Ms. Masood resigned from the service but sent her resignation to Mr. Muzaffar Ali Shah Bukhari of KASB Group who had nothing to do with the affairs of KASBM.

3. The significant and irregular increase in the salary of COO, the use of funds for payment to vigilance officers and VP in above stated manner were found to be prejudicial to the interests of KASBM and its certificate holders and attracting the provisions of section 20 of the Modaraba Ordinance. Consequently, the Notice was issued to the Modaraba Company. The Modaraba Company submitted its reply to the Notice on October 17, 2016. A careful consideration was given to the response and an opportunity of personal hearing was also provided to the Modaraba Company on October 20, 2016.

4. The written responses to the Notice dated October 17, 2016, October 24, 2016 and submissions made in the hearing on October 20, 2016 have been taken into account and my findings on the same are given below:

- (i) With regard to significant increase in the salary of COO, the Modaraba Company in its written reply and the above named Chief Executive and Director in the hearing submitted that HR Manual of KASBM was approved by the Board of Directors. For the increase in the salary of COO, instead of amending entire HR Manual, the HR Committee of the Board approved the increment of beyond 25% in the salary of COO as an exception to HR Manual read with "Competency Dictionary" which stipulates that that the "Review Board will also focus on the exception cases and discuss and agree 'special increases' and promotions". Further, HR committee of the Board approved the increment of COO as an exception to HR Manual. After reviewing the matter, I have observed that the management of KASBM was required to finalize the assessment rating of the employees of KASBM in light of increment policy which defines the rating criteria and increment in salary, based on the final assessment score. After completing the aforesaid exercise, the management could have focused on the 'exception' cases and discuss and agree 'special increases' and promotions.

In terms of Item No. 3 of the minutes dated October 8, 2015, HR Committee recommended and approved the increments and benefits of employees on the basis of rating criteria. However, the Modaraba Company could not produce 'rating competence form' of COO to the enquiry team as well as to the undersigned, which was a prerequisite to consider cases for granting any special increase and promotion. As per the Modaraba Company's letter dated August 12, 2016, the increase in the salary and perks of COO, in



deviation of standard procedure was approved by the Board of Directors. However, the Modaraba Company has not substantiated this fact by any documentary evidence. Further, the Modaraba Company has referred the rating criteria as an illustration which is not correct. It is categorically written in the increment policy that "merit increments given herein are the arbitrary values the criteria of which shall be revised every year by the management after considering the financial performance of the company and future plans".

In the hearing, I observed that in the presence of a full time Chief Executive why the Modaraba Company has employed COO? It was apprised that COO is reporting to the CEO and he is responsible to generate new business, marketing of products of modaraba, coordination and supervision of marketing team and supervision of takaful business etc. However, the Modaraba Company failed to provide a plausible justification for appointing COO and financially overburdening KASBM. It transpires that the appointment of COO is not adding any significant value in terms of increased business volume and profitability of KASBM. Further, the appointment of a major shareholder of the Modaraba Company as COO tantamounts to providing benefits to a related party by over-riding the policies and procedures of KASBM. It entails *Shari'ah* issues as well.

In this regard, the Modaraba Company is directed to critically review the appointment of COO and submit a monthly performance report, highlighting the activities performed by the COO in light of his areas of responsibilities for a period of six months. Further, the appointment of COO (a major shareholder of the Modaraba Company-*Modarib*) needs to be reviewed in light of *Shari'ah* perspective in consultation with the *Shari'ah* advisor of the Modaraba and ruling of *Shari'ah* advisor should be shared with this office.

Action under section 20 of the Modaraba Ordinance is, therefore being deferred for the time being. The affairs of the Modaraba Company shall be monitored closely and final decision on this account shall be taken after a period of six months.

- (ii) With regard to appointment of VOs, it was submitted that the biometric attendance record is not available due to the reason that VOs job required them to be in the field for monitoring and safeguarding the commodities of KASBM lying in the godowns at various places. The Chief Executive also conceded that physical attendance record of VOs was not maintained and only confirmation of their attendance was obtained on phone.

The submissions of the Modaraba Company are not satisfactory. In my view, the Modaraba Company should have implemented biometric or physical attendance record of VOs at all the places where they were posted to keep track of them to ensure presence of VOs at the designated places. However, keeping in view the fact that three VOs in



question had left KASBM on January 31, 2016 i.e. a month before the enquiry was initiated and assurance to implement a proper attendance record of all the employees of KASBM, I am not inclined to press this point further. However, the Modaraba Company is directed to adopt a cautious approach towards appointing and monitoring the employees of KASBM in future.

- (iii) Regarding the appointment of VP, the management has taken the stance that it can appoint someone for a special assignment even though the position is not mentioned in the HR manual. Copies of some emails have been provided in lieu of her attendance record to establish that VP was performing duties in KASBM. Further, it has been stated that the issue of different dates regarding her joining and appointment letter has arisen due to the reason that the matter was not critically observed by HR department otherwise, they could have rectified at that time. Moreover, Ms. Masood had left KASBM two months before the enquiry was initiated. With regard to submission of her resignation to Mr. Muzaffar Ali Shah Bukhari of KASB Group instead of the Modaraba Management, the Modaraba Company has contended that KASB Group comprises of KASBM only as there is no other active entity that is now part of the KASB Group. Further, since VP was primarily engaged for the merger, she had been frequently in contact with the high level stakeholders only which might be the reason for tendering her resignation to Mr. Muzaffar Ali Shah Bukhari instead of the modaraba management.

After reviewing all the facts, I am of the view that appointing a person on a position which is not mentioned in the HR manual, leads to compromising the systems and procedures in place in the organization and make the working manuals useless. Further, the issue of different dates regarding her joining and appointment letter and admission of the discrepancy in it, clearly depicts a casual attitude of the management towards employing human resource for managing the public funds. Perusal of the relevant record provided by the Modaraba Company reveals that Ms. Sana Masood was merely coordinating with the consultant chartered accountant's firm and the management company for a very short period of time for the proposal of merger only. All the financial working and the proposal was made by the consultant i.e. a chartered accountant firm in which Ms. Sana Masood's contribution appears to be negligible.

In light of the facts brought on the record, the appointment of Ms. Sana Masood is hardly justified and cannot be considered in the best interest of KASBM and its certificate holders. However, keeping in view the assurance provided by the Chief Executive during the hearing regarding adherence to all the relevant policies and procedures for future appointments in KASBM, I am not taking any action under section 20 of the Modaraba Ordinance for the time being. However, the performance of the Modaraba Company shall be monitored closely in this regard for a period of six months from the date of this order and any irregularity shall be dealt with in accordance with the law.


5. In light of the foregoing, action under section 20 of the Modaraba Ordinance is hereby withheld and the proceedings under the Notice are kept in abeyance. The performance of the Modaraba Company shall be closely monitored within the next six months and if any lapses or





violations of the regulatory framework are observed, appropriate action under the law shall be taken. The Modaraba Company is advised to submit an undertaking duly signed by all the Board's members, including the Chief Executive, stating that meticulous compliance of the regulatory framework for modaraba shall be ensured and that they will be liable to any loss to the certificate holders, owing to the weak system and controls, and non-compliance of the law.

6. Issued under my hand and seal this 14<sup>th</sup> day of November, 2016.

  
(Shahid Mahmood)

Registrar

Registrar Modaraba Companies and Modaraba

