



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

Before Tariq Naseem, Registrar Modaraba

In the matter of

First Elite Capital Modaraba, managed by Crescent Modaraba Management Company Limited

Number and Date of Notice: SC/M.MS/Elite/11/2022-80 dated March 29, 2022

Date of Hearing: April 19, 2022

Present for Respondent: 1. Mr. Aamir Iftikhar Khan, Chief Executive Officer  
2. Muhammad Arif Hilal, Chief Financial Officer

Date of Order May 21, 2022

ORDER

Under Sub-section 6(A)(2)(h) of Anti-Money Laundering Act, 2010, read with sub-rule (1) of Rule 4 of the AML/CFT Sanctions Rules, 2020 and Regulation 31 of the Securities and Exchange Commission of Pakistan (Anti-Money Laundering and Countering Financing of Terrorism) Regulations, 2020

This Order shall dispose of the proceedings initiated against the First Elite Capital Modaraba (the "Modaraba") managed by Crescent Modaraba Management Company Limited (the "Modaraba Company") through show cause notice dated March 29, 2022 (the "Notice") issued under sub-section 6(A)(2)(h) of Anti-Money Laundering Act, 2010 (the "AML Act"), read with sub-rule (1) of Rule 4 of the AML/CFT Sanctions Rules, 2020 (the "AML Rules") and regulation 31 of the Securities and Exchange Commission of Pakistan (Anti-Money Laundering and Countering Financing of Terrorism) Regulations, 2020 (the "AML Regulations").

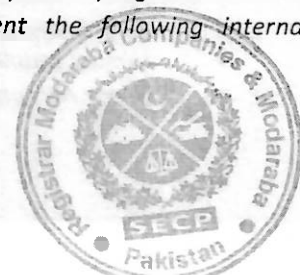
2. Brief facts of the case are that regulations 5 of AML Regulations stipulate that:

*"5. Risk Mitigation and Applying Risk Based Approach - The regulated person shall:*

- a) have policies, controls and procedures, which are approved by its board of directors, to enable them to manage and mitigate the risks that have been identified in its own risk assessment and any other risk assessment publicly available or provided by the Commission;*
- b) monitor the implementation of those policies, controls and procedures and to enhance them if necessary; and*
- c) take enhanced measures to manage and mitigate the risks where higher risk are identified."*

3. Furthermore, regulations 27 of AML Regulations provides that,

*"27. Compliance Program (1) In order to implement compliance programs as set out in 7G of the AML Act, the regulated person shall implement the following internal policies, procedures and controls:*





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- (a) compliance management arrangements, including the appointment of a compliance officer at the management level, as the individual responsible for the regulated person's compliance with these Regulations, the AML Act and other directions and guidelines issued under the aforementioned regulations and laws;
- (b) screening procedures when hiring employees to ensure the integrity and conduct, skills, and expertise of such employees to carry out their functions effectively;
- (c) an ongoing employee training program; and
- (d) an independent audit function to test the system.

(2) For purposes of (a) the regulated person shall ensure that the compliance officer:

- (a) reports directly to the board of directors or chief executive officer or committee;
- (b) has timely access to all customer records and other relevant information which they may require to discharge their functions, as well as any other persons appointed to assist the compliance officer;
- (c) be responsible for the areas including, but not limited to
  - i. ensuring that the internal policies, procedures and controls for prevention of ML/TF are approved by the board of directors of the regulated person and are effectively implemented;
  - ii. monitoring, reviewing and updating AML/CFT policies and procedures, of the regulated person;
  - iii. providing assistance in compliance to other departments and branches of the regulated person;
  - iv. timely submission of accurate data/ returns as required under the applicable laws;
  - v. monitoring and timely reporting of Suspicious and Currency Transactions to FMU; and
  - vi. such other responsibilities as the regulated person may deem necessary in order to ensure compliance with these regulations."

4. An onsite enquiry into the affairs of the Modaraba and the Modaraba Company was conducted under Section 21 of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 vide order dated May 7, 2021. In the enquiry report dated December 29, 2021, the enquiry team have reported some violations of the AML Regulations, which are stated as under, -

*"In violation of regulation 5(a) and (b) read with regulation 27(2)(c)(ii) of AML Regulations, the AML/CFT policy of the Modaraba does not properly covers/contains various elements of AML Regulations. The areas, where Modaraba's AML / CFT Policy found deficient in comparison with updated AML Regulations, are listed below:*

1. Minimum documents' requirements for following types of customers as provided in Annexure I of AML Regulations:

- Joint Account
- Limited Liability Partnership
- Minor Accounts





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- *Executors & Administrators*
- *NPO / NGOs / Charities*
- *Ongoing Monitoring*
- *Risk-based Approach*
- *Customer Due Diligence*
- *Reliance on Third Parties*
- *TFS Obligations*

2. *The regulated person should have oversight function in relation to AML/CFT and Modaraba Company's Board needs to provide policy guidelines for establishing strict controls within the Company. The Enquiry Team noted while reviewing the Board minutes that they have not discussed any matters related to AML/CFT during the period under review.*
3. *Moreover, as informed by Modaraba Company that Board constituted the Executive Committee, which approves the financing after strictly following the guidelines given by the regulator and polices. However, Modaraba Company also couldn't provide minutes of Executive Committee's meetings wherein AML/CFT matters came under consideration."*

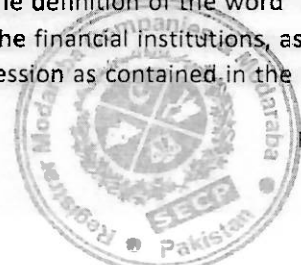
In response, the Modaraba Company informed the enquiry team that the deficiencies noted mainly relate to the organizations, which open and maintain accounts of customers, which is not part of our business. They further added that any work done related to AML/CFT will be included in the Board's minutes in future. The response of the Modaraba Company *prima facie*, appears to be in contravention of aforesaid provisions of the AML Regulations.

5. Consequently, the Notice dated March 29, 2022 under sub-section 6(A)(2)(h) of the AML Act read with sub-rule (1) of rule 4 of the AML Rules and regulation 31 of the AML Regulations was served on the Chief Executive Officer (CEO) and all directors of the Modaraba Company as to why penalty may not be imposed for breach of provisions of the AML Regulations. A hearing opportunity was also provided to the CEO and directors of the Modaraba Company on April 13, 2022.

6. In response, the Modaraba Company, vide email dated April 8, 2022, requested extension of 10 days in time for preparation and submission of reply to the Notice and adjournment of hearing fixed for April 13, 2022. Accordingly, the request of the Modaraba Company was considered and extension in the time for submission of a reply to the Notice up to April 19, 2022 was granted vide email dated April 8, 2022. Hearing fixed for April 13, 2022 was also rescheduled for April 19, 2022 at 10.30.a.m.

7. Mr. Aamir Iftikhar Khan, CEO vide letter dated April 14, 2022 responded to the Notice and also submitted notarized copies of special power of attorney from all directors and copy of board resolution dated April 8, 2022 authorizing him to represent the Modaraba Company before the Registrar Modaraba in relation to the Notice. Mr. Aamir Iftikhar Khan in his above referred letter stated that:

- ✓ We are of the view that our modaraba does not fall within the definition of the word "financial institutions" as contained in the AML Act. The definition of the financial institutions, as given in the AML Act is different from the definition of the said expression as contained in the Financial





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Institution (Recovery of Finances) Ordinance, 2001. It may be mentioned here that Ordinance of 2001 primarily relates to the recovery of finances advanced by the financial institutions. Further, the definition as given in the Ordinance 2001 specifically includes Modarabas and Modaraba Management Companies. However, the AML Act has given its own yardsticks and parameters for the purpose of inclusion of an institution in the definition of the expression financial institutions.

- ✓ While examining each and every part of the definition of financial institutions as given in section 2 (xiv) of the AML Act, we would like to point out that our modaraba is not carrying on the activity viz acceptance of deposits and other payable funds from the public nor it is engaged in lending in whatsoever form. Likewise, the Modaraba is not carrying on money or value transfer, issuance and management of payments which include but not limited to credit and debit cards, cheques, traveler's cheques, money orders, bank drafts and electronic money. Further, we have never issued financial guarantees and commitments in favor of anyone as a part of our business activities. It may be further added here that we are not trading in money market instruments, foreign exchange, interest rate and index instruments, transferable securities, individual and collective portfolio management, safekeeping and administration of cash or liquid securities on behalf of other persons, investing, insurance business transactions money and currency changing and/or carrying out business as an intermediary.
- ✓ So far as "financial leasing" is concerned, we are not even engaged in carrying on such an activity. We would like to specifically state here that we are engaged in the Islamic mode of leasing viz., Ijarah. It may be mentioned here that the word "Ijarah" has been defined in Notification bearing No. S.R.O 431 (1)/2007 as follows:

"Ijarah is a contract whereby the owner of the asset, other than consumable transfers its usufruct to another person for an agreed period for an agreed consideration."

In this regard, we would specifically draw your attention to the letter dated March 9, 2009 through which Securities and Exchange Commission of Pakistan directed that the management companies of Modarabas shall apply the accounting treatment of IFAS 2, only to the leasing (Ijarah) transactions entered on or after July 1, 2008.

- ✓ It may be noticed that the aforementioned treatment of the accounts advised by the SECP is akin to operating leases in contradistinction to financial leasing.
- ✓ It would not be out of place to mention here that the expression financial leasing has not been defined in the relevant statute viz., Anti Money Laundering Act, 2010. Therefore, for properly understanding the meaning and scope of financial leasing following the principles of interpretation of statutes, we may refer to the definitions contained in the other laws of Pakistan. However, in the instant case, said expression has not been defined in any other law to the best of our knowledge.
- ✓ In addition to the above submissions, it is stated that the period for which our inquiry was conducted commenced from January 1, 2020 and ended on March 31, 2021. We would like to point out that our inquiry period was limited up to March 31, 2021 instead of up to April 30, 2021 on our request as our accounting quarter ended on March 31, 2021. The S.R.O.s mentioned in your subject letter do not relate to the relevant period of inquiry as one of the of the S.R.O.s is dated March 31, 2021 while the second is dated April 29, 2021. Therefore, both the S.R.O.s do not apply in our current situation.





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8. An online hearing in the matter was held on April 19, 2022 through Zoom wherein Mr. Aamir Iftikhar Khan, CEO and Muhammad Arif Hilal, Chief Financial Officer (CFO) appeared on behalf of the respondents. In the hearing, they reiterated the same arguments as were already submitted by the CEO vide letter dated April 14, 2022. Keeping in view that all submission in response to the Notice are only relates to the definition of financial institutions and applicability of the AML Regulations on the Modaraba, the CEO was allowed time upto April 25, 2022 to submit supplemental reply specifically to the contents of the Notice.

9. Mr. Aamir Iftikhar Khan, CEO vide letter dated April 22, 2022 submitted its supplementary reply to its earlier response filed on April 14, 2022 and submitted that:

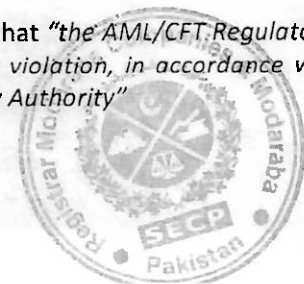
- ✓ Through the Notice, Registrar Modaraba pointed out the areas where Modaraba's AML/CFT policy was found deficient and response of the Modaraba prima facie appears to be in contravention of AML Regulations.
- ✓ We would reiterate our perspective regarding the compliance of certain requirements as contained in AML/CFT and other rules and regulations. In this regard, we submit that the aforementioned requirements are not applicable to the kind of financing which is extended by us to our customers. The requirements listed by you appears to be applicable to deposit taking institutions. We are mention here that our modaraba does not have the permission to take deposits, therefore the said requirements are not applicable to the facts and circumstances to our case. Further, we only provided financial facility to individuals in the shape of Ijarah and not to any institution/company/partnership. For financing to the individuals, we are already receiving necessary information/documents form our customers.
- ✓ In addition to the above, it may be stated that in the meeting of our BOD on February 24, 2022, it was decided the officer of the company responsible for complying with the requirements of AML/CFT be advised to ensure strict compliance of all Laws/Rules/Regulations applicable to Modaraba in relation to the financing being extended by it.

10. Before proceeding to decide the case, I deem it necessary to advert to the following relevant provisions of the AML Act, the AML Rules and the AML Regulations under which the Notice was served on the Modaraba:

(i) Sub-section (2) of section 6A of the AML Act provides that AML/CFT regulatory authority shall exercise the following powers and functions with respect to its reporting entities, namely: -

*"(h) impose sanctions, including monetary and administrative penalties to the extent and in the manners as may be prescribed, upon their respective reporting entity, including its directors and senior management and officers, who violates any requirement in section 7(1), 7(3) to 7(6) and 7A to 7H and any rules or regulations made thereunder or those who fail to comply with the TFS regulations. Any person aggrieved by the imposition of sanctions under this clause may prefer an appeal in such manner and within such period to such authority as may be prescribed"*

(ii) Sub-rule (1) of rule 6 of the AML Rules provides that *"the AML/CFT Regulatory Authority shall apply monetary penalties upto Rs. 100 Million per violation, in accordance with the risk-based penalty scale of the respective AML/CFT Regulatory Authority"*





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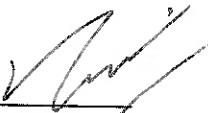
(iii) Sub-regulation 1 of regulation 31 of the AML Regulations provides that "(1) Any contravention of these regulations shall be cognizable by the Commission in accordance with section 6A of the AML Act and liable to sanction provided in the AML/CFT Sanctions Rules, 2020 and imposed by the Commission according to Clause (h) of Sub-section (2) of Section 6A of AML Act."

11. I have analyzed the facts of the case, relevant provisions of the law, submissions made by the CEO vide letters dated April 14, 2022 & April 22, 2022 and arguments put forth at the time of hearing held on April 19, 2022. It has been observed that clause (r) of sub-regulation (1) of regulation 3 of the AML Regulations clearly states that "regulated person means securities brokers, futures brokers, Insurers, Takaful Operators, NBFCs and Modarabas regulated by SECP under the administered legislation." Hence, the AML Regulations are applicable on the Modaraba and the Modaraba is obliged to comply with requirements of the AML Regulations. However, it has been noted that the management of the Modaraba has not placed adequate measures/arrangements to ensure compliance with AML laws.

12. Therefore, I am of the considered view that the Modaraba needs to implement compliance programs, as set out in 7G of the AML Act, in true letter and spirit. For this purpose, the Modaraba is required to implement the internal policies, procedures and controls, as stipulated under regulation 27 of the AML Regulations, including the appointment of a compliance officer at the management level. Furthermore, in recent past, the Modaraba Company vide order dated June 14, 2021 was warned for violations of AML Act, AML Rules and the AML Regulations and directed by the Registrar Modaraba to remain careful and ensure meticulous compliance with all applicable provisions of the law in future. Therefore, oversight by the board of directors of the Modaraba Company is also essential.

13. In view of the forgoing, although the default is established, yet considering that the Modaraba Company, in its board of directors meeting held on February 24, 2022, advised its officer responsible for complying with the requirements of AML/CFT, to ensure strict compliance of all laws/rules/regulations applicable to the Modaraba in relation to the financing being extended by it, I do not intend to discourage the management by imposing maximum fine for the aforesaid default. Therefore, taking a lenient view in the matter, I, in exercise of powers conferred upon me through S.R.O.496(I)/2021 dated April 20, 2021, instead of imposing maximum penalty of Rs. 100 million under rule 6 of the AML Rules, hereby impose a penalty of Rs. 50,000/- on the Modaraba Company with the direction to meticulously comply with the requirements of the AML Regulations in letter and spirit in future.

14. The CEO of the Modaraba Company is hereby directed to deposit, within thirty days of the date of the receipt of this Order, the aforesaid penalty of Rs.50,000/- (Rupees Fifty Thousand Only) in the designated bank account maintained in the name of the Securities & Exchange Commission of Pakistan with MCB Bank Limited and furnish original receipted challan to the Commission.

  
Tariq Naseem  
Registrar Modaraba

