

GOVERNMENT OF PAKISTAN
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Islamabad, the 14th November 2024

NOTIFICATION

S.R.O.1861(I)/2024. – In exercise of the powers conferred by section 41B of the Modaraba Companies and Modaraba (Floatation and control) Ordinance, 1980 (XXXI of 1980), the Securities and Exchange Commission of Pakistan is pleased to make the following amendments to Consolidated Circular for Modarabas, published vide notification S.R.O. 2310 (I)/2022 dated December, 28, 2022, namely:-

AMENDMENTS

In the aforesaid Circular, -

- (1) In Chapter 13, for heading, the following shall be substituted, namely: -
“Shariah Governance for Modarabas”;
- (2) for clause 13.1, the following shall be substituted, namely: -
“13.1 Compliance with the Shariah Governance Regulations, 2023:
(i) The provisions of the Shariah Governance Regulations, 2023, shall apply to modarabas and modaraba companies to the extent of modarabas under management, except in so far as the said provisions are inconsistent with the provisions of the Modaraba Ordinance, Modaraba Rules, Modaraba Regulations, and this circular.

(ii) It shall be the fiduciary responsibility of the board of directors of the modaraba company to ensure that all activities undertaken by the modaraba are in conformity with Shariah principles and rules and that an adequate Shariah governance framework is implemented in letter and spirit to ensure ongoing Shariah compliance.”;
- (3) in heading of clause 13.2, for the words “SCSAM” the words “Shariah governance framework” shall be substituted;
- (4) in clause 13.2, in sub-clause iii, before the semicolon at the end “principles and rules” shall be inserted;

- (5) in clause 13.2, in sub-clause iv, for the comma the expressions “and that the approval of the Shariah advisor of the modaraba has been obtained on the standard agreements shall be inserted;
- (6) in clause 13.2, for sub-clause v, the following shall be substituted, namely: -
“(v) to implement the Shariah screening criteria for the investments in shares and other securities”;
- (7) in clause 13.2, for sub-clause x, the following shall be substituted, namely: -
“x. to introduce policies for ensuring ongoing Shariah compliance”;
- (8) in clause 13.2, for sub-clause xi, the following shall be substituted, namely: -
“xi. to prescribe any other ancillary matter that may be required for Shariah supervision”;
- (9) in clause 13.2, after sub-clause (xi), the following new sub-clause shall be added, namely: -
“(xii) to disclose Shariah opinion pertaining to products and operations of the Modaraba on the website of the Modaraba for information of public at large, as per regulation 24(2) of the Shariah Governance Regulations, 2023:

Provided that the placement of a Shariah opinion (Fatwa) on the website of the Modaraba is obligatory only in cases where the products offered is innovative in nature and are not comparable or deemed similar to those already available in the financial market:

Provided further that if the Shariah opinion is present in the audited financials already uploaded on the website of the Modaraba, a separate upload will not be required.”;

- (10) for clause 13.3, the following shall be substituted, namely: -
“13.3 Shariah Compliance by the Modarabas:
(i) Every modaraba and modaraba company to the extent of modaraba under management, shall ensure compliance with the Shariah compliance and audit requirements provided in the Shariah Governance Regulations, 2023, as applicable to a Shariah-Compliant Company.

(ii) These requirements shall be followed by the modaraba companies and modarabas in the course of their operations. The modaraba and the modaraba companies may include additional requirements and control in their procedures for the sake of more effective Shariah compliance and prudence.

(iii) The requirement for an external Shariah audit shall become effective and applicable for the period ending on or after June 30, 2025. All relevant entities must ensure compliance with this requirement by this date, including the engagement of qualified external auditors and submission of necessary reports as stipulated under the Shariah Governance Regulations, 2023.”

(11) for clause 13.4, the following shall be substituted, namely: -

“13.4 Additional requirements for Shariah Compliance by the Modaraba:

- (i) Every modaraba company shall ensure that the business of the modaraba managed by it is carried out strictly in accordance with the business model contained in the prospectus approved by the Religious Board and the Shariah principles and rules;
- (ii) In case of any material change in the business model, prior approval of the Registrar shall be required;
- (iii) The investment policy of the Modaraba shall be reviewed and approved by the Shariah advisor, before its approval for the board of directors;
- (iv) The non-compliant investments shall be divested within the period as may be allowed by the Shariah advisor;
- (v) The dividend income shall be purified by deducting the amount equivalent to the charity rate for the respective investee company from the total dividend income received by a modaraba;
- (vi) The income received by a modaraba from non-Shariah-compliant sources shall not be accounted for as part of the income of a modaraba, including, inter alia, the following:
 - a. late payment penalty or surcharge received from any client;
 - b. the part of dividend income that pertains to non-Shariah-compliant business activities of the investee company; and
 - c. any other income received by a modaraba from any transaction that was not carried out in accordance with the principles of Shariah.
- (vii) All non-Shariah-compliant income received by a modaraba shall be deemed a liability of the modaraba and shall be transferred by the modaraba company to a separate account, namely a charity account;

- (viii) The amount credited in the charity account shall be used in the manner and subject to the conditions stated hereunder:
- a. All contributions or donations from the charity account shall only be made to the approved charitable organizations registered under Pakistani law as charitable organizations (trusts, hospitals, etc.). The income tax exemption certificate issued by the Government of Pakistan to that effect shall be considered an approval for those purposes. Any exception shall be submitted for approval to the Shariah advisor;
 - b. The purpose of the donation shall be identified; and
 - c. The amount available in the charity account shall ideally be distributed within three months of its transfer. A summary of the operations of the charity account shall be published in the annual accounts of the modaraba.
- (ix) The surplus funds of the modaraba shall only be placed in the accounts to be opened in the Islamic banks, Islamic branches of conventional banks, Islamic mutual funds, or products offered by the modaraba or any other Shariah-compliant investment schemes.”;
- (12) for clause 13.5 and 13.6, the following shall be substituted, namely: -
- “13.5 Shariah supervision:**
- (i) A modaraba company may voluntarily form, constitute, appoint or engage a Shariah supervisory board and until such board is formed, constituted, appointed or engaged, it shall mandatorily appoint a Shariah advisor registered under the Shariah Governance Regulations, 2023, for each of the Modaraba.
- (ii) The powers, functions, responsibilities and obligations of the modaraba company in this regard shall be the same as applicable to a Shariah-compliant company.
- (iii) The powers, functions, responsibilities and obligations of the Shariah supervisory board or the Shariah advisor, as the case may, shall be the same as provided in the Shariah Governance Regulations, 2023.”; and
- (13) clauses 13.7, 13.8, 13.9, 13.10, 13.11, 12.12, 13.13, 13.14, 13.15 and 13.16 shall be omitted.

[File No. SY/SECP/8/13


(Bilal Rasul)
Secretary to the Commission