

IN THE NAME OF ALLAH THE MOST BENEFICIENT, THE MOST  
COMPASSIONATE

GUIDELINES FOR ISSUE OF CERTIFICATES OF MUSHARAKA FOR MODARABAS

The following guidelines are issued dated 7<sup>th</sup> Sept., 94 with the approval of the Religious Board, constituted under section 9 of the Modaraba Ordinance, 1980, for allowing the Modarabas to issue Certificates of Musharaka.

1. DEFINITION

(1) In these Guidelines, unless any thing is repugnant to the subject or context:

(a) "Certificate" means a certificate of definite denomination issued by the Modaraba to the contributory acknowledging the receipt of money contributed by him under these guidelines on the basis for arrangement described herein:

(b) "Contributory" means the holder of a valid Certificate.

(c) "Contributories Fund" means the amount contributed by the Contributories through the Certificates issued under these Guidelines.

(d) "Modaraba" means a legal entity established and floated under the Ordinance.

(e) "Modaraba Fund" means the daily product of the following, based on the books of account of a Modaraba:

- i) paid up fund of the Modaraba;
- ii) revenue and capital reserves;
- iii) un-appropriated profit; and
- iv) accumulated losses, if any, which shall be deducted from the aggregate of (i) , (ii) and (iii) above.

(f) "Ordinance" means the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980.

(g) "Principles of Sharia" means the pertinent principles of Sharia as interpreted by the Religious Board;

(h) "Total Fund" means the aggregate of Contributories Fund and Modaraba Fund as defined in ( c ) and (e) above.

2. All the definitions, terms and expression used but not defined in these Guidelines shall have the same meanings as in the Modaraba Companies and Modaraba (Floatation & Control), Ordinance, 1980 and the Modaraba Companies and Modaraba Rules, 1981.

3. SUPREMACY OF SHARIA

(1) In all matters relating to application of these Guidelines, Sharia shall be absolutely supreme and over-riding in all respects.

- (2) The management of a Modaraba authorized through these Guidelines to raise capital through Certificates of Musharaka shall ensure that all the business transactions and dealings undertaken by the Modaraba and its conduct in all respects shall conform with Sharia. All the business arrangements and agreements shall be in accordance with those approved by the Religious Board.
- (3) None of the business undertaken by the Modaraba, financing arrangements and transactions shall involve directly or indirectly any element of "Riba".
- (4) These Guidelines have been approved by the Religious Board in its meeting held on September 07, 1994 and any change in these Guidelines shall be made with the approval of Religious Board.

#### 4. MUSHARAKA ARRANGEMENT

- (1) The amount received by a Modaraba from the Contributors shall be invested in the overall business activity of the Modaraba on the basis of full participation in the profit and loss of the Modaraba;
- (2) The profit and loss of the Modaraba shall be shared on following basis;
  - (i) Losses shall be shared by the Contributors and the Modaraba in proportion of their fund in the total fund;
  - (ii) Upto 90% of the total profit shall be shared by the Contributors and the Modaraba certificate holders in accordance with ratio declared by the Modaraba and accepted by the contributory, and in the absence of any such declaration in proportion of their respective contribution to the total fund.
- (3) Unless otherwise provided the profit and loss of the Modaraba shall be determined at quarterly intervals. The quarterly profit and loss account of the Modaraba shall be published in at least two national newspapers for the information of this Musharaka Certificate holders.
- (4) In case of loss resulting into winding up of the Modaraba, the payments out of the realizable assets shall be made after discharging liability of creditors, to the Musharaka Certificate holders and Modaraba Certificate holders.
- (5) The Musharaka arrangements specified by the Modaraba shall clearly indicate the frequency of distribution of profit or adjustment of losses to the Musharaka Certificate holders i.e. quarterly, half yearly, annually or at maturity. In all cases the concept of final determination and adjustment of profit and loss at maturity against the total sum repayable to the Musharaka Certificate holders must be clearly stated in all schemes of Musharaka Certificate under these Guidelines.

## 5. APPROVAL BY THE RELIGIOUS BOARD

The Musharaka agreement as well as the certificate of Musharaka and any document providing the terms and conditions of Certificate of Musharaka or pertaining to mobilization of finances by the Modaraba shall be got approved by the Religious Board.

## 6. FEATURES OF CERTIFICATE OF MUSHARAKA

- (1) A certificate of Musharaka issued under these Rules shall be registered in the name of Contributory/Contributories to who it is issued.
- (2) The maturity period of Certificate of Musharaka shall not be less than three months. However, the term of certificate must be specified at the time of issue and shall be indicated in the certificate of Musharaka.
- (3) The return on Certificate of Musharaka shall be determined and payable in accordance with the Musharaka arrangements stated herein.
- (4) The Certificates of Musharaka may be listed on the Stock Exchange or traded over the counter.
- (5) Any public notice or offer issued in connection with sale of Certificate of Musharaka shall specify that the certificates are not guaranteed by the Government and shall also include other conditions that the Registrar may prescribe.
- (6) The Certificates of Musharaka shall be transferable in the manner and upon such conditions as are applicable to the Modaraba Certificates under the Ordinance.

## 7. PURCHASE OF CERTIFICATES OF MUSHARAKA BEFORE MATURITY BY THE MODARABA.

7.1 The Modaraba shall not redeem or encash certificates of Musharaka before its maturity; however, in the case of certificates of Musharaka traded over the counter the Modaraba may provide a facility of purchase of such certificates of Musharaka on the basis of the guidelines specified hereunder:

7.2 Every Modaraba permitted by the Registrar to issue Musharaka Certificate over the counter under these guidelines shall:

- a) Appoint a Trustee to oversee the Musharaka Certificates redemption reserve fund and use of fund for the purchase of Musharaka Certificates by the Modaraba before maturity, and
- b) Establish a “Redemption Reserve Fund” to provide for the scheme for purchase of Certificates of Musharaka from such reserve fund, before maturity.

## 8. THE TRUSTEES

- 8.1 The Trustee for the purposes of these guidelines shall be appointed from the practicing members or firms of Chartered Accountants or the practicing members of Cost and Management Accountants, Investment Banks, Commercial Banks and DFI's.
- 8.2 The Trustee shall report any discrepancy or lack of compliance of these guidelines in respect of the Musharaka Certificates redemption reserve fund or its usage for purchase of Musharaka Certificates before maturity.
- 8.3 Any dispute between the Trustee and the Modaraba shall be referred to the Registrar and his decision in such matter shall be final.
- 8.4 Any dispute pertaining to encashment of Musharaka Certificates before or after maturity or arising between Modaraba and contributory shall be referred for decision of Trustee and any party aggrieved of the said decision shall have the right of representation before the Registrar whose decision on the representation shall be final.
- 8.5 The maximum remuneration of trustee shall be 0.05% per annum of the total Musharaka fund and may be paid quarterly.

## 9. MUSHARAKA CERTIFICATE REDEMPTION RESERVE FUND

- 9.1 The purchase of Musharaka Certificates out of Redemption Reserve Fund price approved by the Trustee and posted by the Modaraba.
- 9.2 The minimum contribution to the Musharaka Certificates redemption reserve fund shall be 5% of the amount of Musharaka Certificates outstanding.
- 9.3 The certificates purchased from the Redemption fund may be sold over the counter or retained till maturity.
- 9.4 The Modaraba shall not exceed the purchase of certificates of Musharaka commitment beyond the amount of the reserve fund.

## 10. SAFEQUARDS

- 10.1 State Bank of Pakistan's Rules of Business for NBFIs including the exposure limits will also apply to the Musharaka Certificates issued by the Modaraba.
- 10.2 Subject to Rule 3 of these Guidelines, in all cases International Accounting Standards as adopted by the Government of Pakistan shall be followed.

10.3 A quarterly report on the Certificates of Musharaka issued by a Modaraba shall be furnished to the Registrar within 10 days from the close of each quarter, as prescribed by the Registrar.

## 11. CONDITIONS OF ELIGIBILITY

11.1 The following conditions of eligibility shall be fulfilled by the Modaraba for the grant of consent by the Registrar to issue of Certificates of Musharaka.

- (i) The prospectus of Modaraba as approved by the Religious Board contains provisions for resource mobilization on Musharaka basis.
- (ii) The paid up fund of the Modaraba is not less than fifty million rupees;
- (iii) The Modaraba is actively engaged in business for a period of two years ***and has obtained credit rating of minimum investment grade from a credit rating agency registered with the Commission and such credit rating shall be updated at least once every year during the currency of the issue.***
- (iv) The corporate and fiduciary conduct of the Modaraba and the directors of the Modaraba Company has been found to be satisfactory.

## 12. PERMISSION TO ISSUE MUSHARAKA CERTIFICATES

If the Registrar is satisfied that the Modaraba fulfills the conditions of eligibility as published and the Modaraba has complied with the Modaraba Ordinance, Rules made thereunder, these guidelines and requirements of its prospectus, he may consent to the issuance of Certificates of Musharaka by the Modaraba.



FORMAT OF CERTIFICATE OF MUSHARAKA

\_\_\_\_\_  
ISSUED BY

\_\_\_\_\_  
MODARABA

Managed by \_\_\_\_\_ (Co.)

Folio Number
Certificate Number
Distinctive Numbers (inclusive)
From                      To
Number of Musharaka Certificates

This is to certify that
is/are the Registered Holders of fully paid Musharaka Shares of Rupees _____ each as mentioned and numbered in the appropriate boxes on the left in _____ Modaraba subject to the term and conditions as specified in the Guidelines for issue of Certificate of Musharaka/Redeemable Capital Certificates for Modaraba.

**OPTIONAL TERMS (TO BE PRINTED AS APPLIED)**

These certificates will be listed on the Stock Exchange.  
These Certificates will be sold and purchased over the  
Counter at \_\_\_\_\_  
Upto \_\_\_\_\_% of total profit shall be shared  
By the contributories and the Modaraba

Given under the common Seal of the Company

This \_\_\_\_\_ day \_\_\_\_\_ 19 \_\_\_\_\_

\_\_\_\_\_  
DIRECTOR

\_\_\_\_\_  
DIRECTOR/SECRETARY





