



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

No. SC/M/RW/PRM/2008-

June 2, 2008

CIRCULAR NO. 10 OF 2008

Subject: **Amendments in the Prudential Regulations for Modarabas**

The Securities and Exchange Commission of Pakistan has amended the existing Prudential Regulations for Modarabas issued vide Circular No. 4 of 2004 dated January 28, 2004 as under:

1. Regulation 2 of Part-I

In sub-regulation (1) of Regulation 2, after clause (h), the following new clauses (hh) and (hhh) are inserted:

- (hh) Fit and Proper Criteria means the criteria specified in Part IV of these Regulations;
- (hhh) Key Executives includes 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;

2. Regulation 5 of Part-IV

The existing Regulation 5 of Part-IV is substituted as under:

5. Fit and Proper Criteria.

Application and scope:

(1) The Fit and Proper Criteria in relation to a Modaraba Company/Modaraba is applicable to the following persons:

- (i) Promoters of the Modaraba Company/Modaraba;
- (ii) Director of the Modaraba Company;
- (iii) Chief Executive of the Modaraba Company;
- (iv) Key Executives of the Modaraba Company.

(2) A proposed director or chief executive of the Modaraba Company shall not assume the charge of their respective office until their appointments have been approved by the Registrar (Modarabas).

(3) The application for seeking approval of the Registrar (Modarabas) under clause (2) shall be submitted by the Modaraba Company along with the requisite information required under Annexure-A and the Affidavit as specified in Annexure-B.

(4) The appointment of Key Executives of the Modaraba Company does not require the approval of the Registrar (Modarabas), however the Modaraba Company shall ensure at the time of appointing a Key Executive that such person qualifies the Fit and Proper Criteria.

(5) The fitness and propriety of any person shall be assessed by taking into account all the relevant factors including but not limited to the following:

- (a) Integrity and track record of such person.
- (b) Financial soundness of such a person.
- (c) Competence and capability of the person.
- (d) Conflict of interest of such person with the business of the Modaraba Company.

ASSESSMENT OF FITNESS AND PROPRIETY

(1) Integrity and Track Record

A person shall not be considered Fit and Proper if he:

- (i) has been convicted of an offence involving moral turpitude;
- (ii) has been involved in the mismanagement of investments, financial/business; misconduct, fraud, etc;
- (iii) has been the subject to adverse findings, after conducting an inquiry, by the Commission/Registrar (Modarabas) or any other regulatory or professional body or government agency;
- (iv) has been actively involved in the management of a company/firm whose registration/ license has been revoked or cancelled or which has gone into liquidation or other similar proceedings due to mismanagement of affairs, financial misconduct or malpractices;
- (v) is ineligible, under the Companies Ordinance, 1984 the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 or any other legislation or regulation, from acting as a director or serving in a managerial capacity of a Modaraba Company, NBFC or a company;
- (vi) has entered into a plea bargain arrangement with the National Accountability Bureau;

- (vii) does not have the requisite disclosed and verifiable financial resources in case of a promoter of the Modaraba Company/Modaraba; or
- (viii) does not have an established and proven track record of successfully running a business enterprise for 3 to 5 years, preferably a public listed company.

(2) **Financial soundness**

In determining a person's financial soundness, the following shall be considered:

- (i) whether such person's financial statements/record including wealth statements/income tax returns/ assessment orders are available;
- (ii) whether the person has been declared by a court of competent jurisdiction as defaulter in repayment of loan to a financial institution exceeding Rupees one million;
- (ii) whether the person has applied to be adjudicated as an insolvent and his application is pending;
- (iv) whether the person is an un-discharged insolvent; and
- (v) whether the person has been declared a defaulter by a stock exchange.

(3) **Competence and Capability**

In determining a person's competence and capability the following shall be considered:

- (i) the directors should be individuals having management/business experience of at least five years at a senior level;
- (ii) the directors shall have experience and knowledge in any profession such as financial services, accounting, law etc;
- (iii) the chief executive should have a minimum experience of seven to ten years in a senior management position, preferably in the regulated financial services sector;
- (iv) the chief executive should have the capacity to successfully undertake the responsibilities of the position; and
- (v) the Key Executives must be qualified professionals possessing relevant experience and certification relating to the job/

assignment.

(4) Conflict of interest

The proposed directors or chief executive of Modaraba Company shall not:

- (i) be a director in any other Modaraba Company engaged in a similar business in Pakistan.

Provided that this condition shall not apply to nominees of the Commission, Federal or Provincial Governments on the board of any Modaraba Company;

- (ii) be a director, chief executive, chief financial officer, chief internal auditor, research analyst or a trader (by whatever name/designation called) in a stock brokerage house or in any company/entity owned and controlled by a member of a stock exchange; and
- (iii) be a member of a stock exchange engaged in the business of brokerage or is a spouse of such member.

(5) The Fit and Proper Criteria is perpetual in nature and a Modaraba Company shall ensure compliance with the provisions of Fit and Proper Criteria.

(6) All persons subject to Fit and Proper Criteria must submit any change in the submitted information through the Chief Executive/Company Secretary of the Modaraba Company to the Registrar (Modarabas).

(7) Any violations or circumvention of the Fit and Proper Criteria shall be dealt with under Section 32 of the provisions of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980.

Annexure A

Information to be provided by Promoters, proposed director and proposed chief executive of the Modaraba Company

1.	Curriculum Vitae/Resume containing:
a	Name: (former name if any):
b	Father's/Husband Name:
c	C.N.I.C # (attach copy)
d	Latest photograph
e	Nationality:
f	Age:
g	Contact details:
	i) Residential address:
	ii) Business address:
	iii) Tel:
	iv) Mobile:
	v) Fax:
	vi) E-mail:
h	National Tax Number:
i	Present occupation:
j	Qualification(s):
	i) Academic:
	ii) Professional:
k	Experience: (Positions held during the last 10 years along with name and address of company/institution)
2.	Nature of directorship: Executive Non-executive Status of directorship Nominee director Nominated by _____ (name of shareholder along with nomination letter) Number of shares subscribed/held _____ Personal net worth (copy of wealth statement) _____
3.	Names of companies, firms and other organizations of which the proposed person is a director, partner, office holder or major shareholder.
4.	CIB report issued by SBP for each company of which he has been a director (attach original CIB report for the last 10 years)
5.	In the case of appointment of directors the date of board of directors' meeting in which the appointment of proposed director was approved. (Attach copy of the minutes of the meeting of the board of directors. If the director is elected,

	then attach a copy of the minutes of the general meeting of the company.)
6.	Names of persons on the Board of the Modaraba Company who are related to the applicant.

Signature _____

*use additional sheets if required

**(On Stamp Paper of appropriate value)
AFFIDAVIT**

Before the Registrar (Modarabas), Securities and Exchange Commission of Pakistan:

I, _____ son/daughter/wife of _____ adult, resident of _____ and holding CNIC/Passport No. _____ do hereby state on solemn affirmation as under:-

1. That I am eligible for the position of _____ according to the Fit and Proper Criteria for the position of _____, as prescribed under the Prudential Regulations for Modarabas.
 2. That I hereby confirm that the statements made and the information given by me is correct and that there are no facts which have been concealed.
 3. That I have no objection if the Registrar (Modarabas) or Securities and Exchange Commission of Pakistan requests or obtains information about me from any third party.
 4. That I undertake to bring to the attention of the Registrar (Modarabas)/Securities Exchange Commission of Pakistan any matter which may potentially affect my status for the position of _____ as per the Fit and Proper Criteria as prescribed under the Prudential Regulations for Modarabas.
 5. That all the documents provided to the Registrar (Modarabas)/ Securities Exchange Commission of Pakistan are true copies of the originals and I have compared the copies with their respective originals and certify them to be true copies thereof.
2. That I do hereby verify that the statements made above are correct to the best of my knowledge and belief and nothing has been concealed therein.

DEPONENT

The Deponent is identified by me

Signature _____

**ADVOCATE
(Name and Seal)**

Solemnly affirmed before me on this _____ day of _____ at _____ by the Deponent above named who is identified to me by _____, Advocate.

Signature _____
**OATH COMMISSIONER FOR TAKING
AFFIDAVIT
(Name and Seal)**

3. Part-IV

In Part-IV, Annexure-II (Form-I & II), Annexure-III (Affidavits from Sponsoring Director/Sponsoring Institution/Nominee Director) are deleted/removed.

The aforesaid amendments in the Prudential Regulations for Modarabas are applicable with immediate effect.

(Bilal Rasul)
Registrar (Modarabas)

Distribution:

1. The Chief Executives of all Modaraba Companies.
2. The Chairman, Modaraba Association of Pakistan.
3. The Institute of Chartered Accountants of Pakistan, Karachi.
4. The Institute of Cost and Management Accountants of Pakistan, Karachi.
5. Media Consultant, SEC
6. Executive Director IS & T.
7. Office copy.