

A
Bill

to provide for the establishment of Deposit Protection Corporation, as a subsidiary of the State Bank of Pakistan, and for the management and control thereof

WHEREAS it is expedient to provide for the establishment, management and control of Deposit Protection Corporation, as a subsidiary of the State Bank of Pakistan, for protection of small depositors in order to ensure the financial stability of, and maintain the public trust in, the financial system, and for matters connected therewith or ancillary thereto;

It is hereby enacted as follows:-

CHAPTER -I
PRELIMINARY

1. Short title, extent and commencement. – (1) This Act may be called the Deposit Protection Corporation Act, 2016.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. Definitions. – In this Act, unless there is anything repugnant in the subject or context,-

(a) “banking company” has the same meaning as defined in section 5 of the Banking Companies Ordinance, 1962 (LVII of 1962);

(b) “Board” means the Board of Directors of the Corporation;

(c) “Chairman” means the Chairman of the Board;

(d) “Director” means a member of the Board;

(e) “Corporation” means the Deposit Protection Corporation established under sub-section (1) of section 3;

(f) “Failed Institution” means such member institution that has been notified by the State Bank under sub-section (1) of section 21;

(g) “Governor” means the Governor of the State Bank and includes an Acting Governor;

(h) “Managing Director” means the Managing Director appointed under section 12;

(i) “Member Institution” means a banking company or a financial institution which is notified by the Corporation as a member institution and which is required to pay premium to the Corporation under the provisions of this Act;

(j) “Prescribed” means prescribed by rules or regulations made under this Act;

(k) “Protected Deposit” means the deposit protected under section 7, subject to exceptions under section 8;

(l) “Regulations” means regulations made under this Act;

(m) “Rules” means rules made under this Act;

(n) “Seal” means the common seal of the Corporation; and

- (o) "State Bank" means the State Bank of Pakistan established under the State Bank of Pakistan Act, 1956 (XXXIII of 1956).

CHAPTER -II

ESTABLISHMENT AND OPERATION OF THE CORPORATION

3. Establishment of the Corporation. – (1) On the commencement of this Act, there shall be established a Corporation to be called Deposit Protection Corporation.

(2). The Corporation shall be a body corporate having perpetual succession and a seal and shall, by the said name sue and be sued.

(3). The head office of the Corporation shall be situated in Karachi: it may shift the head office and establish offices in Pakistan with the prior approval, in writing, of the State Bank.

4. Corporation to be a subsidiary of the State Bank. - The Corporation shall be a subsidiary of the State Bank.

5. Objective of the Corporation. –(1) The objective of the Corporation is to compensate the depositors for losses incurred by them to the extent of protected deposits in the event of failure of a member institution as notified by the State Bank under sub-section (1) of section 21.

(2). All banks scheduled under sub-section (2) of section 37 of the State Bank of Pakistan Act, 1956 (XXXIII of 1956), unless exempted or excluded by the Board, shall compulsorily be member institutions of the Corporation and liable to pay the prescribed premium.

6. Business and functions of the Corporation. – The Corporation, under the overall supervision and control of the Board, may transact and carry on all or any of the following functions, namely: -

- (a) collect premiums and contributions from member institutions and others;
- (b) acquire, hold, manage, and invest resources of the Corporation;
- (c) receive grants and borrow moneys;
- (d) assess and verify claims of the depositors made against the failed institution;
- (e) make or cause to be made payments to the depositors to the extent of protected deposits;
- (f) recover payments made on account of protected deposits from the assets of failed institutions;
- (g) incur any expenses concerning its functions;
- (h) enter into any contracts or other arrangements or any financial or other transactions;
- (i) issue guarantees and indemnities;
- (j) purchase, hold, manage, lease, encumber, transfer, and dispose of any property and assets;
- (k) hire, employ, or retain any person(s) as an employee, agent, or consultant on full time, temporary or on deputation basis and make necessary regulations for the terms and conditions of their service;

- (l) create awareness among general public and depositors about the deposit protection scheme as contained in this Act; and
- (m) carry on any business, discharge any functions and exercise powers as are necessary for, incidental to, or in connection with, the affairs of the Corporation, or any other act or deed deemed by the Board to be in the interest of the Corporation or for the advancement of the purposes of this Act.

7. Protected Deposits. – (1) The Corporation shall guarantee the full payment of funds held in depositor's accounts with a member institution, regardless of the number and size of the deposits, up to an amount Prescribed by the Corporation from time to time.

(2). The above amount shall be inclusive of any interest accrued or return due as at the date of the notification of the State Bank under sub-section (1) of section 21.

(3). *Shariah* compliant mechanism of deposit protection in respect of Islamic banking institutions shall be provided in the Prescribed manner which shall be approved by State Bank's *Shariah* Board.

(4). Within ninety days of its commencement of business, the Corporation shall publish, in at least two daily newspapers having wide circulation, the guarantee amount as provided under sub-section (1) of this section. Any subsequent change in the guarantee amount shall be in same way published in two daily newspapers having wide circulation.

8. Exceptions. – (1) Protected Deposits shall not cover the deposits of , -

- (a) persons who have been granted preferential interest or return in deviation from the terms and conditions announced by a Member Institution which the Member Institution is obliged to apply to all its depositors of similar category;
- (b) members of the Board of Directors and senior management of a member institution including chief executive officer and key executives;
- (c) partners of auditing firms responsible to certify the Member Institutions' financial statements;
- (d) persons having acquired rights to a deposit after the issuance of State Bank's notification under sub-section (1) of section 21;
- (e) spouse, dependent lineal ascendants and descendants and dependent brothers and sisters of the persons specified in clauses (b), (c) and (d);
- (f) any Member Institution whose deposits are in its name and on its account;
- (g) government or government institutions;
- (h) any company as defined under the Companies Ordinance, 1984 (XLVII of 1984); or
- (i) any other class of persons or institutions as specified by the Board from time to time:

Provided that where the Board specifically excludes any class of persons or institutions, such decision shall be published by the Corporation in two daily newspapers having wide circulation.

(2). Protected deposits shall not cover deposits arising out of or related to transactions or actions constituting 'money laundering' within the meaning of the Anti-Money Laundering Act, 2010 (VII of 2010), if the offender has been convicted of such offence.

9. Share capital and limited liability. – (1)The authorized share capital of the Corporation shall be one billion rupees or such other amount as the State Bank may, from time to time, determine by order in writing and shall be divided into shares of one million rupees each.

(2) The paid-up capital of the Corporation shall be such amount as may, from time to time, by order in writing determined by the State Bank and contributed by the shareholders.

(3) The share capital may be divided into different kinds and classes as may be prescribed.

(4) The liability of shareholders of the Corporation shall be limited to the amount, if any, not fully paid-up on the shares held by them in the capital of the Corporation.

(5) No dividend shall be payable to the shareholders of the Corporation.

10. Board of Directors. – (1) The general superintendence, direction and management of the affairs and business of the Corporation and overall policy making in respect of its operations shall vest in the Board which may exercise all such powers and do all such acts, deeds and things that may be exercised or done by the Corporation.

(2) The Board shall consist of the following seven directors, namely:-

(a) a Deputy Governor of the State Bank as nominated by the State Bank;

(b) four Directors to be appointed on the nomination by Federal Government in consultation with the State Bank. The directors so appointed shall have knowledge of banking, commerce, industry, economics, finance or law and neither of these directors shall be an officer of the Federal or a Provincial Government or of the State Bank or an employee or director or shareholder of the Member Institution;

(c) one Director, an official of the Ministry of Finance, to be appointed on the recommendation of the Federal Government; and

(d) the Managing Director.

(3) The Directors appointed under clause (b) of sub-section (2) shall hold office for a term of three years and shall be eligible for re-appointment for an additional term of three years on the basis of their performance in the first term.

(4) The meetings of the Board shall be held at such times and places as may be prescribed or, until so prescribed, as and when convened by the Chairman.

(5) The Directors shall be paid by the Corporation such fees and allowances for attending the meetings of the Board or of any of its committees and for attending to any other work of the Corporation as may be Prescribed.

(6) No act or proceedings of the Board shall be invalid merely on the ground of the existence of any vacancy in, or defect in the constitution of, the Board.

(7) The quorum of meetings of the Board shall be as may be prescribed or, until so prescribed, shall be three Directors.

(8) All decisions of the Board shall be taken by majority of the Directors present and voting at a meeting duly convened and held and in the event of an equality of votes the Chairman may exercise a casting vote.

(9) A resolution in writing signed by all Directors shall be as effective as if such resolution had been passed at a meeting of the Board.

(10) Till such time the Board is constituted or three months of the commencement of this Act, whichever is earlier, all powers of the Board shall vest in the State Bank

11. Chairman. – (1) The Deputy Governor of the State Bank shall be the Chairman of the Board.

(2) The Chairman shall, whenever present, preside over meetings of the Board. In the absence of the Chairman, the Directors present shall choose one of them to be the Chairman for such meeting.

12. Managing Director. – (1) The State Bank shall appoint a professional person who has significant experience in banking, finance, accountancy, business administration or public administration as Managing Director of the Corporation for a term of five years and he shall be eligible for re-appointment for another term of five years on the basis of his performance in the first term:

Provided that the Managing Director may delegate his powers, by general or special order in writing, to senior executive of the Corporation for managing day- to- day affairs during his leave period or absence from Pakistan:

Provided further that if the office of Managing Director is vacant, the State Bank may appoint any of its senior executive as acting Managing Director for a period not exceeding three months.

(2) The Managing Director shall be the chief executive officer of the Corporation and shall, subject to the control and direction of the Board, administer the affairs of the Corporation, and shall have such powers for this purpose as are from time to time delegated to him by the Board.

(3) The salary and other terms and conditions of service of the Managing Director shall be such as the Board may determine except that neither the salary of the Managing Director nor his other terms and conditions of service shall be varied to his disadvantage after his appointment.

(4) The Managing Director shall devote his full time and attention to the affairs of the Corporation, provided that the Managing Director may, in addition to his duties as the Managing Director, be entrusted with such other duties for such period as the Board may, by order in writing, determine.

13. Disqualifications of the Directors. – No person shall be appointed or hold office as Director who-

- (a) is a member of the Senate, National Assembly, any Provincial Assembly, or an elected member of a local council or local body constituted under any law relating to local councils or local bodies;

- (b) is a director, officer or employee of any banking company or financial institution or has an interest as a shareholder in a banking company or financial institution:
 Provided that nothing in this clause shall apply where the Director is in the employment of the State Bank or its subsidiaries or where the Director is, in addition to holding the office of Director, entrusted with additional duties by the Board or State Bank;
- (c) has been convicted of tax evasion under any law, or has been convicted or proceedings are pending against him under section 412 of the Companies Ordinance, 1984 (XLVII of 1984), or section 83 of the Banking Companies Ordinance, 1962 (LVII of 1962), or has been convicted by a court of law for an offence involving moral turpitude;
- (d) has been deprived of the right to hold a position of financial responsibility;
- (e) is in default of payments due from him to any banking company, financial institution, cooperative society, Government Department, Government controlled or managed company or corporation and for the purpose of this clause, default in payment by the spouse, dependent children, and companies, firms and other business concerns under the control or management of a person shall be considered as the default of such person; or
- (f) holds an office in a political party.

14. Removal of a Director. – A Director or the Managing Director may be removed by State Bank by an order in writing where it is established that,-

- (a) any of the circumstances referred to in section 13 is applicable;
- (b) he has become physically or mentally incapable of carrying out his responsibilities for a continuous period of six months or more;
- (c) he has been engaged in a serious misconduct;
- (d) his activities impair the Corporation's interests;
- (e) he has been absent from three or more successive meetings of the Board without reasonable ground; or
- (f) otherwise State Bank considers him to be unfit to be a Director or as the case may be Managing Director.

15. Disclosure of Interest. – (1) Every Director and employee of the Corporation shall disclose in writing to the Board any commercial, financial or other business interest which he or his family members may have, whether directly or indirectly, and which may have adverse implications for the Corporation's interest.

(2) In performing their obligations, the persons under sub-section (1) shall be bound to place the Corporation's interests before their own interests.

(3) Directors shall not participate in any discussion and shall restrain from voting on the issues in which their commercial, financial or other business interest, or those of their families, is involved.

16. Committees of Directors. – (1) The Board may constitute one or more committees consisting of such number of Directors as it may determine.

(2) The powers, functions, duties and other terms of appointment of a committee of directors shall be such as the Board may determine.

(3) The members of a Committee of Directors shall hold office for such period as the Board may determine.

(4) The minutes of every meeting of a Committee of Directors shall be presented before the Board at its next meeting following the meeting of the Committee.

(5) Subject to the general and any special directions of the Board, a Committee of Directors shall deal with any matter entrusted to it by the Board.

17. Corporation's Resources. – (1) The sources of the Corporation's resources shall, among others, consist of the following, namely:-

- (a) the paid-up share capital;
- (b) initial premiums from member institutions;
- (c) periodic premiums from member institutions;
- (d) return on the investments ;
- (e) proceeds received from a member institution's property in case of sale or liquidation;
or
- (f) other sources including loans, donations, grants and foreign assistance etc.

18. Financing the Corporation in shortfall of resources. –(1) If at any time, resources of the Corporation fall short of its liabilities under this Act, such shortfall may be covered in one of the following ways, namely-

- (a) requiring member institutions to pay advance premium;
- (b) increasing the premium;
- (c) drawing loans in accordance with the terms and conditions Prescribed by the Board;
and
- (d) allocations from the Federal Government.

(2) The amount paid in advance under clause (a) of sub-section (1) shall be adjusted against future premiums.

(3) The maximum amount of the increased premium contribution under clause (b) of sub-section (1) may not exceed such percentage of the deposit base as Prescribed by the Board.

(4) Loans drawn by the Corporation may be secured by a guarantee issued by the Federal Government, State Bank or by Corporation's assets, including Corporation's future claims on member institutions for premium contributions.

19. Investments made and Accounts maintained by the Corporation. – (1)The Corporation may invest in,-

- (a) Government securities issued or securities guaranteed by the Government; or
- (b) any other investment avenue as approved by the Board:

Provided that the Corporation shall formulate an investment policy within ninety days of its commencement of business. The investment policy shall be designed keeping in view the objectives of the Corporation and in line with the underlying factors like risks and liquidity.

(2) The Corporation shall open and maintain account with SBP Banking Services Corporation or with any other financial institution with the prior approval of the Board.

20. Determining the size of deposits. –(1)The total amount of a Member Institution's liability to a depositor shall be determined by adding up all the depositor's deposits, including interest accrued or return due as at the date of notification under sub-section (1) of section 21. In establishing the Member Institution's total liability to a depositor, foreign currency deposits shall be taken at equivalent amount, at the exchange rate declared by the State Bank at the date of the State Bank's notification under sub-section (1) of section 21.

(2) In the event of a joint deposit, each person's portion shall be taken into account in establishing the total amount of that person's deposits held by a Member Institution. If it is not otherwise provided for in the deposit contract, it shall be assumed that the depositors' portions are equal.

(3) In the event of a deposit contract in favor of a third party, the person in whose favor the deposit has been opened (the beneficiary) shall be entitled to receive a payment from the Corporation unless it is otherwise provided for in the contract. If there is more than one beneficiary, the joint depositor rule as provided in sub-section (2) shall apply.

(4) A deposit which is encumbered or serves as collateral shall be included in the adding up under sub-section (1) and the amount due on the deposit shall not be paid to the titleholder of the deposit until the said encumbrance or security has been lifted. Where an order issued by a court in respect of such deposit is effective, the Corporation shall pay the amount due on the deposit to the person who is designated in the order as the person authorized to receive the deposit amount.

21. Terms and procedures for reimbursement of protected deposits. – (1) The State Bank shall, by a notification, declare a Member Institution as a Failed Institution as a result of its insolvency or any significant judicial or regulatory action that cancels the license of member institution or restricts the access to deposits.

(2) The Corporation shall pay the liabilities of the Failed Institution to its depositors up to the amount protected, in the cases the State Bank has issued a notification under sub-section (1).

(3) The Corporation shall owe no interest on protected amounts.

(4) The Corporation shall pay the protected amount of deposits in cash or through transfer of deposit to any banking company or in any other way as determined by its Board.

(5) As soon as possible, after the issuance of notification under sub-section (1), the Corporation shall collect necessary information and cause the same to be published in at least two daily newspapers having wide circulation including information about the date after which depositors shall be paid from the Corporation and the procedure for payments.

(6) Payments from the Corporation to the protected depositors shall begin as early as possible from the date of the notification under sub-section (1). The Corporation shall ensure that payments to most of the protected depositors are made or tendered within seven working days and that all payments are made or tendered within thirty days at the latest, if there is no dispute as to the entitlement to, or ownership of, the deposit.

(7) For foreign currency denominated deposits, the depositor shall be paid the rupee equivalent of the protected amount at the exchange rate declared by State Bank on the day of the notification under sub-section (1).

(8) A member institution's liability to its depositors shall be reduced proportionally by the amounts paid by the Corporation to depositors and shall be replaced by an equivalent liability to the Corporation.

(9) The Corporation shall regularly notify the liquidator or the assignee in bankruptcy of the failed institution about the amount paid by the Corporation to any depositor.

22. Priority of Payment.- (1) Notwithstanding anything contained in the Companies Ordinance, 1984 (XLVII of 1984), the Banking Companies Ordinance 1962 (LVII of 1962) and any other law in respect of insolvency or liquidation or tax, the claim of the Corporation against the failed institution to the extent of protected deposit paid or to be paid and any arrears of outstanding premium shall have priority to all other claims.

(2) For the avoidance of doubt, it is clarified that payment to the depositors, to the extent of protected amount, of a failed institution against whom winding up order is passed shall be made only through the Corporation, and the Corporation shall also have priority rights of the protected depositors as provided under section 58 of the Banking Companies Ordinance, 1962 (LVII of 1962)

23. Delegation of powers and appointment of attorneys. -(1)The Board may, for the purpose of ensuring smooth and efficient functioning of the Corporation and facilitating transactions of its daily business, by resolution, delegate to the Managing Director or any other executive of the Corporation, subject to such conditions and limitations, if any, as may be specified therein, such of its powers and duties under this Act as it may deem necessary.

(2) The Board may, from time to time, by resolution appoint any company, firm or person to be the attorney of the Corporation for such purposes and with such powers, authorities and discretions, not exceeding those vested in or exercisable by the Board under this Act and for such period and subject to such conditions as the Board may think fit, and any such resolution may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Board may think fit.

24. Accounts and audit. - (1) The accounting year of the Corporation shall commence on the first day of July and end on the thirtieth day of June.

(2) The Corporation shall maintain proper accounts and other records to reflect true and fair view of its state of affairs and prepare annual statement of accounts, including the profit and loss accounts and statement of financial position.

(3) The accounts of the Corporation shall be audited by one or more auditors who shall be chartered accountants within the meaning of the Chartered Accountants Ordinance, 1961 (X of 1961), to be appointed by the Board.

(4) Every auditor shall be supplied with a copy of the annual statement of accounts and it shall be the duty of the auditor to examine the same together with the accounts and vouchers relating thereto, and every auditor shall have a list delivered to him of all books kept by the Corporation and shall, at all reasonable times, have access to books, accounts and other documents of the Corporation and may employ accountants or other persons to assist him in auditing such accounts and may, in relation to such accounts, examine the Managing Director, Directors and executives of the Corporation.

(5) The auditors shall submit a report to the Board regarding the annual statement of accounts, and in any such report they shall state whether in their opinion the statement of accounts is a full and fair statement of accounts containing all necessary particulars and is properly drawn up so as to exhibit a true and correct view of the state of affairs of the Corporation and, in case they have called for any explanation or information from the Managing Director or the Board, whether it has been given and whether it is satisfactory.

(6) The Board may, in addition to the audit under sub-sections (3) and (4), cause to be carried out internal audit of the Corporation's accounts and the internal auditors' reports shall be submitted to the Board.

25. Power of the State Bank to give directions. – (1) In order to protect the interest of small depositors or ensure the financial stability, where the State Bank is satisfied that,-

- (a) in the public interest; or
- (b) to prevent the affairs of the Corporation being conducted in a manner detrimental to the interests of its beneficiaries or in a manner prejudicial to the interests of the Corporation or of the State Bank; or
- (c) to secure the proper management of the Corporation generally or to further the objectives of this Act;

it is necessary to issue directions to the Corporation, the State Bank may, from time to time, issue such directions as it may deem fit and the Corporation shall be bound to comply with such directions.

(2) If any provision of this Act is contravened, or if any default is made in complying with any requirement of this Act or of any rule or regulation, direction made or condition imposed there under, the State Bank may, on a complaint made in writing by the Corporation, or on its own motion, impose on the Member Institution and any other person who is knowingly a party to such contravention or default, a fine which may extend to two hundred thousand rupees, and where a contravention or default is a continuing one, a further fine may be imposed which may extend to ten thousand rupees for every day during which such contravention or default continues.

(3) The State Bank may recover the amount of any outstanding premium or fine from a member institution by debiting its account maintained with the SBP Banking Services Corporation.

(4) Any member institution or other person aggrieved by the imposition of fine under this section may, within twenty - one days from the date on which such decision is communicated to him apply for review to the State Bank.

CHAPTER - III MISCELLANEOUS

26. Duty of Officers and servants to maintain secrecy. – (1) Except in the performance of his duties under this Act, every executive or other employee of the Corporation shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of the Corporation and of the State Bank coming to his knowledge and not published by the Corporation or by the State Bank and with regard to all matters relating to the financial or monetary affairs of any institution, person, body of persons, any Government or authority whether in Pakistan or outside Pakistan that may come to his knowledge in the performance of his duties.

(2) Every such executive or other employee who communicates any such matter, except when required by law so to do, or in the discharge of his duties as such, shall be guilty of an offence punishable with imprisonment of either description for a term which may extend to three years, or with fine which may extend to one hundred thousand rupees, or with both.

(3) No court shall take cognizance of any offence punishable under this section except upon a complaint in writing by a person authorized in this behalf by the Board.

27. Officers to be public officers. – (1) For the purposes of Article 7 of the *Qanun-e-Shahadat*, 1984 (P.O. No. 10 of 1984), the provisions of Part IV of the Code of Civil Procedure, 1908 (Act V of 1908), and the provisions of rule 27 of Order V, and rule 52 of Order XXI of the said Code any person in the service of the Corporation acting in his capacity as such shall be deemed to be a public officer.

(2) The provisions of Article 6 of the *Qanun-e-Shahadat*, 1984 (P.O. No.10 of 1984), shall apply to the unpublished records of the Corporation and the Managing Director shall be deemed to be the officer or head of the department concerned.

28. Persons in the service of the Corporation to be public servants. – Every person in the service of the Corporation shall be deemed to be a public servant within the meaning of section 21 of the Pakistan Penal Code (Act XLV of 1860).

29. Production of unpublished records of the Corporation, etc. – (1) No court, tribunal or other authority shall be entitled to compel the Corporation or any person in the service of the Corporation to produce or, as the case may be, give any evidence derived from, any unpublished records of the Corporation.

(2) No court, tribunal or other authority shall permit any one to produce or give evidence derived from, any unpublished records of the Corporation, except with the prior permission in writing of the Managing Director who may give or withhold such permission as he thinks fit.

(3) Notwithstanding anything contained in this Act or any other law for the time being in force, a report prepared by the Corporation on a member institution under any law for the time being in force shall be deemed to be unpublished for the purposes of sub-sections (1) and (2) even

if a copy of such report has been supplied to the member institution to which the report pertains, the State Bank or the Federal Government.

30. Pension, gratuity, provident fund and other employment benefits of Corporation's employees to be exempt from attachments, etc. – Notwithstanding anything contained in any law for the time being in force, pensions, gratuity or provident fund and other employment benefits granted by the Corporation to its executives and other employees shall not be liable to seizure, attachment or sequestration by process of any court at the instance of a creditor, for any demand against the pensioner or in satisfaction of a decree or order of any such court.

31. Exemption from taxes. – Notwithstanding anything contained in the Wealth Tax Act, 1963 (XV of 1963), the Income Tax Ordinance, 2001 (XLIX of 2001), the Stamp Act 1899 (II of 1899) or any other law for the time being in force relating to wealth tax, income tax, super tax or any other tax, the Corporation shall not be liable to pay any wealth tax, income tax or super tax.

32. Power to make rules. – The State Bank, with approval of the Federal Government, may, by notification in the official Gazette, make rules, consistent with the provision of this Act, for carrying out the purposes of this Act.

33. Power to make regulations. – (1) The Board may make regulations, not inconsistent with the provisions of this Act and the rules made thereunder, to provide for all matters for which provision is necessary or convenient for the purpose of giving effect to the provisions of this Act.

(2) Where any provision of the regulations is inconsistent with any provision of the rules, the provision of the rules shall prevail.

(3) Where the State Bank considers it expedient so to do, it may by order in writing, direct the Board to make any regulations or to amend or rescind any regulations already made, within such period as it may specify in this behalf.

(4) If the Board fails to comply with any direction of the State Bank under sub-section (3) within the specified period, the State Bank may make, amend or rescind any regulation directed by the State Bank to be made, amended or rescinded, and a regulation so made, amended or rescinded by the State Bank shall be deemed to have been made, amended or rescinded by the Board in accordance with the provisions of this section and shall have effect accordingly.

34. Power to call information. – (1) The Corporation may call for any record or information from any member institution as it may deem necessary for discharging its functions under this Act.

(2) The Corporation shall report to the State Bank in case any member institution fails to provide information or record required under sub-section (1) or comply with any provisions of this Act or any rules or regulations made under this Act and the State Bank may take any action corrective, penal or remedial against such member institution as it may deem appropriate keeping in view the nature and extent of failure.

35. Protection of action taken in good faith. – No suit or other legal proceedings shall lie against the Corporation or the State Bank or any Director or officer of the Corporation or the State Bank for anything done or intended to be done in pursuance of this Act or of any rules, regulations or orders made there under unless done in bad faith.

36. Liquidation of the Corporation. – The Corporation shall not be placed in liquidation save by order of the State Bank and in such manner and on such terms and conditions as the State Bank may direct.

37. Act to override. – Except the application of any provision of the Act to the Corporation as a subsidiary of the State Bank, this Act shall have effect notwithstanding anything contained in any law for the time being in force or in any agreement, contract, or other applicable documents or instrument.

38. Removal of difficulties. – If any difficulty arises in giving effect to any of the provisions of this Act, the State Bank may make such order not inconsistent with the provisions of this Act, as may appear to it to be necessary for the purposes of removing the difficulty: provided that aforesaid power shall cease to exist on expiry of two years, from the commencement of this Act.

39. Removal of deposit protection under the Banks (Nationalization) Act, 1974 (XIX of 1974). – Sub-section (4) of the section 5 of the Banks (Nationalization) Act, 1974 (XIX of 1974) shall not be applicable to any member institution.

STATEMENT OF OBJECTS & REASONS

The purpose of the subject draft Act is to establish the Deposit Protection Corporation (DPC) for instituting an explicit deposit insurance scheme in Pakistan. The deposit insurance is considered an integral safety-net tool to ensure the soundness of the banking system and protect small depositors of a bank in case of its failure.

2. The banking system in Pakistan has become increasingly private sector-owned through the privatization of the once dominant state-owned banks and the entry of new banks. Consequently, the share of public sector banks has dropped from 92% in 1990 to around 19% in March 2015. However, the legal framework originally promulgated for nationalized banks has not kept pace with these developments. While the deposits of all state-owned banks were protected through government guarantees at the time of nationalization, denationalization coupled with entry of new banks has left the safety of deposits to an arbitrary and implicit depositor protection by the government or the State Bank in case a private-sector owned bank fails. However, it is widely assumed by the public that the Federal Government or the State Bank would compensate depositors in case of failure of any bank. Such an implicit generalized government guarantee of bank deposits is not compatible with a market-based banking system which is mainly owned by private sector. The existing system of implicit deposit protection creates huge moral hazard as (i) it reduces incentives for bank creditors and depositors to monitor the soundness of their banks and thus exert market discipline on banks, (ii) it fails to distinguish between the protection of banks' shareholders vis-à-vis protection of depositors, (iii) it undermines the accountability for poor management of banks, and (iv) it results in the cost of potential failures falling heavily on the taxpayers.

3. In order to reduce the moral hazard implicit in the present system and to protect small depositors, it is proposed to introduce an explicit depositor insurance scheme through DPC which will compensate depositors up to a prescribed limited amount in case of a bank's failure. The DPC will be a fully owned subsidiary of the State Bank which has the statutory responsibility to ensure the soundness of the banking system. This arrangement will yield maximum synergy and cost-saving due to close coordination of the DPC with the State Bank's supervisory functions and resources.

4. This Bill is designed to achieve the aforesaid purpose.

Senator Mohammad Ishaq Dar
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