

COMPANIES (SECOND AMENDMENT) ORDINANCE, 2002.

ORDINANCE CXXIII OF 2002

An

Ordinance

further to amend the Companies Ordinance, 1984.

WHEREAS it is expedient further to amend the Companies Ordinance, 1984 (XLVII of 1984), for the purposes hereinafter appearing;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of Emergency of the Fourteenth day of October, 1999, and the Provisional Constitution Order No. 1 of 1999, read with the Provisional Constitution (Amendment) Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:--

1. Short title and commencement.----(1) This Ordinance may be called the Companies (Second Amendment) Ordinance, 2002.

(2) It shall come into force at once.

2. Insertion of Part VIII A, Ordinance XLVII of 1984.----In the Companies Ordinance, 1984 (XLVII of 1984). after Part VIII, the following new part shall be inserted, namely:--

"PART VIII A.

NON-BANKING FINANCE COMPANIES PROVISIONS

AS TO ESTABLISHMENT AND REGULATION OF

NON-BANKING FINANCE COMPANIES.

282-A. Application of this Part.---The provisions of this Part shall apply to-

(a) non-banking finance companies (NBFCs) which include companies licensed by the Commission to carry out any one or more of the following forms of business, namely:-

(i) Investment Finance Services;

(ii) Leasing;

(iii) Housing Finance Services;.

(iv) Venture Capital Investment; .

(v) Discounting Services;

(vi) Investment Advisory Services;.

(vii) Asset Management Services; and

(viii) any other form of business which the Federal Government may by notification in the official Gazette specify from time to time; and

(b) such other company or class of companies or corporate body-as the Federal Government may, by notification in the official Gazette specify for the purpose,

282-B Power to make Rules.---The Federal Government may make rules for establishment and regulation of NBFCs and such rules may, inter alia, in addition to anything already provided in this Ordinance, provide for conditions relating to qualifications of directors, chief executive, chairman, auditors, for licensing, capital and audit requirements; and any other matter which the-Commission may deem fit for the effective regulation of NBFCs and companies established under the rules framed hereunder.

282-C. Incorporation of NBFC.--(1) A NBFC shall not be incorporated without prior approval of the Commission.

(2) Notwithstanding anything contained in any other provision of this Ordinance, a NBFC shall not carry on business unless it holds a licence issued in that behalf by the Commission; and any such licence maybe issued subject to such conditions, as the Commission may deem fit to impose.

(3) Every company in existence which is engaged in anyone. or more forms of business as specified in section 282-A, before the expiry of six months from coming into force of this section and every other company before commencing any form of business as specified in section 282-A, shall apply in writing to the Commission for grant of a license under this section The Commission, if it is satisfied that the company has fulfilled the conditions, prescribed by the Commission in respect of the business for which the licence is 'being sought, may grant licences to such company for one or more of the forms of business specified in section 282-A.

(4) A NBFC shall not commence or carry on business unless it has such minimum paid-up capital as may be prescribed by the Commission from time to time in respect of each form of business as specified in section 282-A.

282-D. Power to issue directions:---(1) Notwithstanding anything contained in any other provision of this Ordinance. Where the Commission is satisfied that it is necessary and expedient so to do.

(a) in the public interest; or

(b) to prevent the affairs of any NBFC being conducted in..... detrimental to the interests of shareholders or persons whose interesting likely to be affected of in a manner prejudicial to the interests of the NBFCs or

(c) to secure the proper management of any NBFC generally, issue directions to NBFCs generally or to any NBFC in particular to carry out such changes as are necessary to rectify the situation and the NBFCs shall be bound to comply with such directions.

(2) The Commission may, on representation made to it or on its own motion, modify or cancel any direction issued under subsection (1), and in so modifying or canceling any direction may impose such conditions as it thinks fit.

282-E. Power to remove.----- (1) Notwithstanding anything contained on of this Ordinance, where the Commission is satisfied that-----

(a) continued association .of any Chairman or Director or Chief Executive or any other officer of a NBFC, is or is likely to be detrimental to the interests of NBFC, or its shareholders or persons whose interest is likely to be affected' or

(b) the public interest so demands' or

(c) to prevent the affairs of NBFC being conducted in a manner detrimental to the interest of its shareholders or in manner -prejudicial to the interests of NBFC' or

(d) to secure a proper management of the NBFC,

it is necessary so to do, the Commission may, for reasons to be recorded in writing, by order, remove from office, with effect from such date as may be specified in the order, any chairman or director or chief executive or other officer of the NBFC.

(2) No order under subsection (1) shall be made unless the chairman or director or chief executive or other officer has been given a reasonable opportunity of making a representation and of being heard:

Provided that if, in the opinion of the Commission, any delay would be detrimental to the public interest or the interest of its shareholders, the Commission may, as the time of giving the opportunity aforesaid or at any time thereafter and pending the consideration of the representation aforesaid, if any, by order direct that-

(i) the chairman or, director or chief executive or other officer shall not, with effect from the date of the order--

(a) act as such chairman or 'director or chief executive or other officer of the NBFC; or ,

(b) in any way, whether directly, or indirectly, be concerned with, or take part in the management of the NBFC; .

(ii) any person authorized by the Commission in this behalf shall act as such chairman or director or chief executive of the NBFC till another person is elected in a general meeting or a board meeting, as may be directed by the Commission, to fill in the vacancy.

(3) Where any order under subsection (1) is made in respect of a chairman or director or chief executive or other officer of a NBFC, he shall cease to be a chairman or a director or chief executive or other officer of the NBFC and shall not in any way, whether directly or indirectly, be concerned with, or take part in, the management of the NBFC or any other NBFC for such period not exceeding three years as may be specified in the order.

(4) Any person appointed as chairman or director of chief executive under subsection (2) shall--

(a) hold office during the pleasure of the Commission subject to such conditions as may be specified in the order of his appointment and, subject thereto for such period, not exceeding three years as the Commission may specify; and

(b) not incur any obligation or liability for anything which is done or intended to be done, in his capacity as such chairman or director or chief executive.

(5) No person removed from office under subsection (1) shall be entitled to claim any compensation for the loss or termination of office.

282-F. Power to supersede Board of Directors.----(1) Notwithstanding anything contained in any other provision of this Ordinance, where the Commission is satisfied that the association of the Board of Directors of any NBFC is or is likely to be detrimental to the interest of the NBFC or its shareholders or is otherwise undesirable; or for all or any of the reasons specified in section 282-E. it is

necessary so to do, the Commission may. forreason to be recorded in writing, by order, supersede the Board of Directors of a NBFC with effect from such date and for such period as may be specified in the order.

(2) The period of supersession 4 specified in an order under subsection (1) tray from time to time be extended by the Commission so, however, that the total period of supersession does not exceed three years.

(3) All powers and duties of the Board of Directors; shall, during the period of supersession, be exercised and performed by such person as the Commission may from time to time appoint in this behalf.

(4) The provisions of subsections (2), (3), (4) and (5) of section 282-E shall, with necessary modifications apply to an order made under subsection (1) or (3) of this section.

282-G. Power to require to furnish information, etc.-----**(1)** The Commission may, at any tune, by notice in writing, require NBFCs generally. or any NBFC in particular to furnish it within the time specified therein or such further time Ps the Commission may allow, with any statement or information of document relating to the business or affairs of such NBFC or NBFCs (including arty business or affairs with which such NBFC or NBFCs is or are concerned) and, without prejudice to the generality of the foregoing power, may call for information, at such intervals as the Commission may deem necessary.

(2) No NBFC, director, officer, employee or agent or auditor thereof shall in, any document; prospectus, report, return, accounts, information or explanation required to be furnished in pursuance of this Part or the rules made thereunder, or .in any application made under this Part or the rules, make any statement of give any information which he knows or has reasonable cause to believe to be false or incorrect or omit any material fact therefrom.

282-H. Special Audit.----**(1)** Notwithstanding anything contained in any other provision of this Ordinance, the Commission -shall monitor the general financial condition of a NBFC, and, at its discretion, may order special audit and appoint an auditor to carry out detailed scrutiny of the affairs of NBFC, provided that the Commission may, during the pendency of scrutiny, pass such interim orders and directions as may be deemed appropriate the Commission.

(2) On receipt of the special audit report, the Commission may direct a NBFC to do or to abstain from doing certain acts and issue directives for immediate compliance which shall forthwith be complied with, or take such other action under this Ordinance as it deems fit.

282-I. Inquiry by the Commission.---**(1)** The Commission may cause an inquiry or inspection to be made by any person appointed in this behalf into the affairs of a NBFC licensed under this Ordinance or of any of its directors, managers or other officers.

(2) Where an inquiry or inspection under subsection (1) has been ordered, every director, manager or other officer of the NBFC to which or to whose director, manager or other officer the enquiry or inspection relates and every other person who has had any dealing with such NBFC, its director partner, manager or officer shall furnish such information in his custody or power or within his knowledge relating to, or having bearing on the subject-matter of the enmity or inspection as the person conducting the enquiry or inspection may by notice in writing require.

(3) The person conducting an enquiry or inspection under subsection (1) may call for, inspect and seize books of account and documents in possession of any such NBFC or any of its directors, managers

282-J. Penalty for failure, refusal to comply with, or contravention of any provision of this Part.---(1) Notwithstanding anything contained in any other provision of this Ordinance, if a NBFC or its officers (including auditors) fails or refuses to comply with, or contravenes any provision contained in this Part or of any of the provisions of the rules made under section 282-B or any direction or order passed by the Commission under the provisions contained in this Part or knowingly and wilfully authorizes or permits such failure, refusal or contravention, shall, in addition to any other liability under this Ordinance, be also punishable with fine the amount of which shall not exceed five million rupees:

Provided that if the failure, refusal, default, contravention is committed by NBFC, every director, manager, or other officer responsible for the conduct of its affairs shall, unless he proves that the failure or contravention or default took place or committed without his knowledge, or that he exercised all diligence to prevent its commission, be deemed to be guilty of the offence.

(2) Without prejudice to the provisions of subsection (1), in case of contravention of any provision of this Ordinance or rules made or noncompliance of any direction given or order passed thereunder by the Commission, the Commission may cancel anyone or more of the licences in respect of the various forms of business of the NBFC, after issuing a show cause notice and giving such NBFC an opportunity of being heard or pass any other order which may be deemed appropriate by the Commission.

(3) Upon cancellation of all the licences, the functions and carrying on the business of NBFC shall cease and the Commission may move the Court for winding-up of the NBFC.

(4) no appeal shall be made in respect of an. order made under the provisions of section 282 of this Ordinance and under rules made thereunder; provided a challan form evidencing deposit of twenty-five per cent of the penalty amount is filed with the Commission at the time of filing the appeal which amount; however, shall be refunded in case the appeal is decided in favour of the appellant.

(5) Notwithstanding anything to the contrary contained in this Ordinance, if an officer (which expression includes auditors) of a NBFC fails to make payment, within six months of the order imposing penalty on him, the Commission may, by an order in writing, disqualify him from holding any office in any company or NBFC for such period as may be specified in the order.

282-K. Penalty for making false statement, etc.---(1) Notwithstanding anything contained in any other provision of this Ordinance, if, any person, being the chairman, director, chief executive, by whatever name called or official liquidator or any officer of a NBFC in any document, prospectus, report, return, accounts, information or explanation required to be furnished in pursuance of this Ordinance or the rules made thereunder, wilfully makes a statement which is false in any material particular knowing it to be false, or wilfully omits to make a material statement, mismanages the affairs of the NBFC or misuses his position for gaining direct or indirect benefit for himself or any of his family members, he shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine which shall be not less than one hundred thousand rupees, and shall be ordered by the Court trying the offence, to deliver up or refund within a time to be fixed by the Court any property acquired or gained by him in his own name or in the name of his family members by so mismanaging

the affairs of the NBFC or misusing his position or, in default, to suffer imprisonment for a term which may extend to three years.

(2) Any officer, director or chief executive of a NBFC who is either directly or indirectly or owned, controlled or managed by the Federal Government or a Provincial Government who extends, or aides in extending, a loan, advance, or any financial facility to a borrower or customer on the verbal instruction of a holder of a public officer without reducing the terms of the instructions into writing and drawing them to the attention of his superior officer or the board of directors, shall be guilty of an offence punishable with imprisonment of either description which may extend to one year, or with fine or with both in addition to such other action which may be taken against him in accordance with law.

(3) If any company which is not a NBFC, or a company which does not hold a licence under section 282-C or the licence granted to which has been cancelled, or any individual or association or body of individuals, transacts the business specified in 282 A, the chief executive, by whatever name called, of the company and every director, manager, and other officer of the company, and the individual and every member of the association or body of individuals, shall be deemed to be guilty of such contravention and shall be punishable with imprisonment of either description for a term which may extend to seven years and with fine the amount of which shall not exceed one million and shall be ordered by the Court trying the offence to pay the fine within a time to be fixed by the Court or in default to suffer further imprisonment for a term which may extend to five years.

Explanation.-For the purposes of this section a director or chief executive or other officer shall be deemed to have acted knowingly if he has departed from established NBFC business practices and procedures or circumvented the regulations or directions/restrictions laid down by the Commission from time to time.

282-L. Procedure for amalgamation of NBFCs.----(1) Without prejudice to the provisions contained in Part IX of this Ordinance, NBFCs may be amalgamated with each other provided a scheme containing the terms of such amalgamation has been placed in draft before the shareholders of each of the NBFC concerned separately, and approved by a resolution passed by a majority in number representing two-thirds in value of the shareholders of each of the said NBFCs, present either in person or by proxy at a meeting called for the purpose.

(2) Notice of every such meeting as is referred to in subsection (1) shall be given to every shareholder of each of the NBFC concerned in accordance with the relevant articles of association, indicating the time, place and object of the meeting, and shall also be published at least once a week for three consecutive weeks in not less than two newspapers which circulate in the locality or localities where the registered offices of the NBFCs concerned are situated, one of such newspapers being in a language commonly understood in the locality or localities.

(3) Any shareholder, who has voted against the scheme, of amalgamation at the meeting or has given notice in writing at or prior to the meeting to the NBFC concerned or the Presiding Officer of the meeting that he dissents from the scheme of amalgamation, shall be entitled, in the event of the scheme being sanctioned by the Commission to claim from the NBFC concerned, in respect of the shares held by him in that NBFC, their value as determined by the Commission when sanctioning the scheme and such determination by the Commission as to the value of the shares to be paid to dissenting shareholder shall be final for all purposes.

(4) If the scheme of amalgamation is approved by the requisite majority of shareholders in accordance with the provisions of this section, it shall be

submitted to the Commission for sanction and shall, if sanctioned by the Commission by an order in writing passed in this behalf be binding on the NBFCs concerned and also on all the shareholders thereof.

(5) Where a scheme of amalgamation is sanctioned by the Commission under the provisions of this section, the remaining or resulting entity shall transmit a copy of the order sanctioning the scheme to the registrar before whom the NBFC concerned have been registered and the Registrar shall, on receipt of any such order, strike off the name of the NBFC hereinafter in this section referred to as the amalgamated NBFC which by reason of the amalgamation will cease to function.

(6) On the sanctioning of scheme of amalgamation by the Commission, the property of the amalgamated NBFC shall, by virtue of the order of sanction, be transferred to and vest in, and the liabilities of the said NBFC shall, by virtue of the said order be transferred to and become the liabilities of the NBFC which under the scheme of amalgamation is to acquire the business of the amalgamated NBFC, subject in all cases to the terms of the order sanctioning the scheme.