

**REPORT OF THE STANDING COMMITTEE ON FINANCE,
REVENUE, ECONOMIC AFFAIRS, STATISTICS AND
PRIVATIZATION ON THE DEPOSIT PROTECTION
CORPORATION BILL, 2015**

1, Chairman of the Standing Committee on Finance, Revenue, Economic Affairs, Statistics and Privatization have the honor to present this report on the 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 [the Deposit Protection Corporation Bill, 2015] referred to the Standing Committee on 25-11-2015.

2. The Committee comprises the following Members:—

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|-----|------------------------------------|-----------------|
| (1) | Mr. Qaiser Ahmad Sheikh | <i>Chairman</i> |
| (2) | Mr. Saeed Ahmed Khan Manais | <i>Member</i> |
| (3) | Rana Shamim Ahmed Khan | <i>Member</i> |
| (4) | Mr. Daniyal Aziz | <i>Member</i> |

(5)	Mr. Muhammad Pervaiz Malik	<i>Member</i>
(6)	Sardar Muhammad Jaffar Khan Leghari	<i>Member</i>
(7)	Ms. Shahzadi Umerzadi Tiwana	<i>Member</i>
(8)	Mr. Alam Dad Laleka	<i>Member</i>
(9)	Sheikh Fayyaz-ud-Din	<i>Member</i>
(10)	Mian Abdul Mannan	<i>Member</i>
(11)	Ms. Shaza Fatima Khawaja	<i>Member</i>
(12)	Ms. Leila Khan	<i>Member</i>
(13)	Syed Naveed Qamar	<i>Member</i>
(14)	Dr. Nafisa Shah	<i>Member</i>
(15)	Syed Mustafa Mehmud	<i>Member</i>
(16)	Mr. Jehangir Khan Tareen	<i>Member</i>
(17)	Mr. Asad Umar	<i>Member</i>
(18)	Mr. Muhammad Ali Rashid	<i>Member</i>
(19)	Mr. Abdul Rashid Godil	<i>Member</i>
(20)	Mr. Aftab Ahmad Khan Sherpao	<i>Member</i>
(21)	Mr. Muhammad Ishaq Dar, Minister for Finance, Revenue, Economic Affairs, Statistics and Privatization	<i>Ex-officio Member</i>

3. The Committee in its meetings held on 24th February and 04th March, 2016, considered the above Bill in detail and approved the same. The Committee unanimously recommends that the Bill as introduced in the National Assembly placed at **Annex-A**, may be passed by the National Assembly.

Sd/-
ABDUL JABBAR ALI,
Secretary
National Assembly Secretariat

Sd/-
QAISER AHMAD SHEIKH,
Chairman
Standing Committee on
Finance, Revenue, Economic Affairs,
Statistics and Privatization.

ISLAMABAD, the 11th March, 2016.

Annex-A

[AS REPORTED BY THE STANDING COMMITTEE]

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, 2015.

(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;
- (h) 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 payment.

(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 it 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 thereunder 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 AND 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-a-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,
*Minister for Finance, Revenue, Economic
Affairs, Statistics and Privatization.*

Pursuant to rule 235 (4) of the Rules of Procedure and Conduct of Business in the National Assembly, 2007, the following report of the Standing Committee, presented to the Assembly on 14th March, 2016 is published for information:—

**REPORT OF THE STANDING COMMITTEE ON FINANCE,
REVENUE, ECONOMIC AFFAIRS, STATISTICS AND
PRIVATIZATION ON THE FINANCIAL INSTITUTIONS
(SECURED TRANSACTIONS Bill 2016)**

I, Chairman of the Standing Committee on Finance, Revenue, Economic Affairs, Statistics and Privatization have the honor to present this report on the Bill to provide for the creation of security interests over moveable property and to establish a secured transactions registry [the Financial Institutions (Secured Transactions) Bill, 2016] referred to the Standing Committee on 01-01-2016.

2. The Committee comprises the following Members:

(1)	Mr. Kaiser Ahmad Sheikh	<i>Chairman</i>
(2)	Mr. Saeed Ahmed Khan Manais	<i>Member</i>
(3)	Rana Shamim Ahmed Khan	<i>Member</i>
(4)	Mr. Daniyal Aziz	<i>Member</i>
(5)	Mr. Muhammad Pervaiz Malik	<i>Member</i>
(6)	Sardar Muhammad Jaffar Khan Leghari	<i>Member</i>
(7)	Ms. Shahzadi. Umerzadi Tiwana	<i>Member</i>
(8)	Mr. Alam Dad Laleka	<i>Member</i>
(9)	Sheikh Fayyaz-ud-Din	<i>Member</i>
(10)	Mian Abdul Mannan	<i>Member</i>
(11)	Ms. Shaza Fatima Khawaja	<i>Member</i>
(12)	Ms. Leila Khan	<i>Member</i>
(13)	Syed Naveed Qamar	<i>Member</i>
(14)	Dr. Nafisa Shah	<i>Member</i>
(15)	Syed Mustafa Mehmud	<i>Member</i>

(16)	Mr. Jehangir Khan Tareen	<i>Member</i>
(17)	Mr. Asad Umar	<i>Member</i>
(18)	Mr. Muhammad Ali Rashid	<i>Member</i>
(19)	Mr. Abdul Rashid Godil	<i>Member</i>
(20)	Mr. Aftab Ahmad Khan Sherpao	<i>Member</i>
(21)	Mr. Muhammad Ishaq Dar, Minister for Finance, Revenue, Economic Affairs, Statistics and Privatization	<i>Ex-officio Member</i>

3. The Committee in its meetings held on 24th February, 2016 and 4th March, 2016, considered the above Bill in detail and approved the same. The Committee unanimously recommends that the Bill as introduced in the National Assembly placed at Annex-A, may be passed by the National Assembly.

Sd/-
QAISER AHMAD SHEIKH,
Chairman
Standing Committee on
Finance, Revenue, Economic Affairs,
Statistics and Privatization.

Sd/-
ABDUL JABBAR ALI,
Secretary
National Assembly Secretariat

ISLAMABAD, the 11th March, 2016.

Annex-A

[AS REPORTED BY THE STANDING COMMITTEE]

A

BILL

*to provide for the creation of security interests over movable property
and to establish a secured transactions registry*

WHEREAS it is expedient for the promotion and conduct of banking business to provide for the creation of security interests over movable property to secure the obligations owed by a customer to a financial institution, clarify and expand for the purpose the meaning and scope of movable property, provide for the establishment of a secured Transactions registry, define, amend and codify certain laws relating to security interests over movable property and provide for matters connected therewith or incidental thereto.

It is hereby enacted as follows:—

Part I**Preliminary**

1. **Short title, commencement and application.**—(1) This Act may be called the Financial Institutions Secured Transactions) Act, 2016

(2) It extends to the whole of Pakistan.

(3) It shall come into force upon issuance of the notification by the Federal Government under sub-section (2) of Section 19.

2. **Definitions.**—(1) In this Act, unless there is anything repugnant in the subject or context; —

(i) “**account debtor**” means any person liable, whether under a contract or otherwise, to pay any receivables or discharge any obligation in respect of receivables;

(ii) “**after-acquired property**” means movable property that is acquired by a customer after entering into a security agreement, and includes future receivables as specified in the explanation to sub-section (4) of section 53;

- (iii) **“agricultural produce”** means —
 - (a) any produce of agriculture or horticulture, including but not limited to crops (including growing crops), standing timber, poultry, fish and livestock (including unborn offspring); and
 - (b) products derived from any produce under clause (i), including but not limited to meat, eggs, hides, bones, skins, wool and hair;
- (iv) **“assignee”** means a person in whose favour the receivables are assigned;
- (v) **“assignment of receivables”** means a transfer of rights, title, interests and benefits of the receivables by the assignor to the assignee;
- (vi) **“assignor”** means a person who assigns the receivables;
- (vii) **“book-entry security”** shall have the same meaning as is assigned to it under clause (5) of section 2 of the Central Depositories Act, 1997 (XIX of 1997);
- (viii) **“collateral”** means the movable property, located in or outside Pakistan, that is subject to a security interest;
- (ix) **“commingled goods”** means a product or mass that is produced or manufactured by physically associating or uniting collateral with other movable property in such a manner that the identity of the collateral is lost in such product or mass;
- (x) **“company”** shall have the same meaning as is assigned to it under clause (7) of sub-section (1) of section 2 of the Companies Act, 1984 (XLVII of 1984);
- (xi) **“control”** with respect to a deposit account exists —
 - (a) automatically upon the creation of the security interest if the secured creditor is the depository bank; or
 - (b) if the depository bank has entered into a control agreement with the customer and the secured creditor;
- (xii) **“control agreement”** means an agreement in writing between the secured creditor, customer and the depository bank according to which

the depository bank has agreed to follow instructions from the secured creditor with respect to the payment of funds credited in the deposit account without further consent from the customer;

- (xiii) **“customer”** shall have the same meaning as is assigned to it under clause (c) of section 2 of the Recovery Ordinance; and shall be deemed to include an entity;
- (xiv) **“deposit account”** includes a current or a savings account maintained with a depository bank to which funds may be credited;
- (xv) **“depository bank”** means the financial institution maintaining a deposit account;
- (xvi) **“electronic”** shall have the same meaning as is assigned to it under clause (I) of section 2 of the Electronic Transactions Ordinance, 2002 (Ordinance No. LI of 2002);
- (xvii) **“entity”** means a person other than a company, and includes a natural person, a sole proprietorship, a partnership or association of persons, a non-government organization registered under the Voluntary Social Welfare Agencies (Registration and Control) ordinance, 1961 (XLVI of 1961) or any other law for the time being in force for the registration at a non-government organization, a cooperative society registered under the Co-operative Societies Act, 1925 (VII of 1925) or any other law for the time being in force for the registration of a cooperative society, a society registered under the Societies Registration Act, 1860 (XXI of 1860) or any other law for the time being in force for the registration of a society, a trust created under the Trusts Act, 1882 (II of 1882); and a body corporate established pursuant to a law;
- (xviii) **“event of default”**, in relation to a security agreement, means —
 - (a) the failure to pay or to otherwise perform the obligation secured under the security agreement when due; or
 - (b) an event that gives the secured creditor the right to enforce the security interest under the security agreement;
- (xix) **“exempted property”** means movable property as notified by the Federal Government for the purposes of sub-section (2) of section 4 notwithstanding anything inconsistent therewith contained in the proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1908

(Act V of 1908) or any other law for the time being in force, provided that until such notification has been issued the proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1908 (Act V of 1908) shall continue to apply;

- (xx) **“financing statement”** mean the presdribed form to be filed in the register for the purposes of entering the particulars of a security interest created by an entity in the register;
- (xxi) **“floating charge”** means a charge created by a customer on all present and after-acquired movable property or a certain class of present and after-acquired movable property (including receivables or inventory), in favour of a secured creditor and pursuant to which the customer is free to deal with the movable property in the ordinary course of its business until the crystallization, in terms of the security agreement, of such charge into a fixed charge;
- (xxii) **“Form 10”** means the prescribed form to be filed with the registrar of companies for the purposes of entering the particulars of a security interest created by a company in the register of mortgages and charges under the Companies Ordinance, 1984 (XLVII of 1984);
- (xxiii) **“Form 16”** means the prescribed form to be filed with the registrar of companies for the purposes of modifying the particulars of a security interest created by a company in the register of mortgages and charges under the Companies Ordinance, 1984 (XLVII of 1984);
- (xxiv) **“hypothecation”** means a charge created by a customer, on all or any present or after-acquired movable property, in favour of a secured creditor without delivery of possession of the movable property to such secured creditor;
- (xxv) **“immovable property”** shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth, and shall, notwithstanding anything inconsistent therewith contained in the General Clauses Act, 1897 (X of 1897), Transfer of Property Act, 1882 (IV of 1882), Registration Act 1908, (XVI of 1908) and any other law for the time being in force, exclude property attached to immovable property as defined in clause (mm) of this sub- section;
- (xxvi) **“information system”** shall have the same meaning as is assigned to it under section 2(p) of the Electronic Transactions Ordinance, 2002 (LI of 2002);

- (xxvii) **“modification statement”** means the prescribed form to be filed in the register for the purposes of effecting the modification to a registered financing statement;
- (xxviii) **“motor vehicle”** shall have the same meaning as is assigned to it under sub-section (23) of section 2 of the Motor Vehicles Ordinance, 1965 (XIX of 1965);
- (xxix) **“movable property”** means any tangible or intangible property other than immovable property, including but not limited to receivables; right under letters of credit; rights under trust receipts; securities (including Government securities) other than book-entry securities; right to funds credited in a deposit account; title document; negotiable instruments; intellectual property, including patents, trademarks, copy rights, trade-names, goodwill, royalties; stock in trade; inventory; interest in partnership and other form of entity ornaments; jewellery; stones; goods-in-transit; agricultural produce; leaves; grass, including growing grass; petroleum or minerals that have been extracted; motor vehicles and property attached to immovable property as defined in clause (mm) of this sub-section;
- (xxx) **“negotiable instrument”** shall have the same meaning as is assigned to it under section 13 of the Negotiable Instruments Act, 1881 (XXVI of 1881);
- (xxxi) **“notification”** means a notification published in the official Gazette;
- (xxxii) **“perfection”** means the act required to be done in terms of section 14 to make a security interest effective against third parties;
- (xxxiii) **“pledge”** shall have the same meaning as is assigned to it under section 172 of the Contract Act, 1872 (IX of 1872) and excludes a security interest in a negotiable instrument or a security interest in collateral covered by a title document;
- (xxxiv) **“possession”** means the actual possession of collateral by a person or an agent or employee of that person, or by an independent person that acknowledges holding it for that person;
- (xxxv) **“preferential claims”** means the claims to be paid in priority on insolvency of a customer as prescribed in section 405 of the Companies

Ordinance, 1984 (XLVII of 1984) or section 61 of the Provincial Insolvency Act, 1920 (V of 1920) or section 49 of the Insolvency (Karachi Division) Act, 1909 (III of 1909), as applicable;

- (xxxvi) **"prescribed"** means prescribed by rules or regulations made under this Act;
- (xxxvii) **"proceeds"** means identifiable or traceable movable property derived from collateral including (a) movable property acquired, directly or indirectly, upon the sale, lease, licence, exchange, or any other mode of alienation of collateral; (b) natural fruits of the collateral, including harvested produce where the collateral crops or wool, meat or offspring where the collateral is livestock; (c) any and all amounts, revenues and receivables paid or payable under or in connection with the collateral; (d) rights arising out of the collateral, including a right to an insurance payment or any other payment as indemnity or compensation for loss of, or damage to the collateral; and (e) proceeds of proceeds;
- (xxxviii) **"property attached to immovable property"** means the following property irrespective of whether it is attached to the earth or permanently fastened to anything attached to the earth:
- (a) plant, equipment or machinery;
 - (b) fixtures and fittings;
 - (c) cables or pipelines embedded in the earth or otherwise; and
 - (d) any other item of property as may be notified by the Federal Government for the purposes of this Act notwithstanding anything inconsistent therewith contained in the General Clauses Act, 1897 (X of 1897), Transfer of Property Act, 1882 (IV of 1882), Registration Act, 1908 (XVI of 1908) and any other law for the time being in force;
- (xxxix) **"receivables"** means a contractual or non-contractual right to receive money, whether such right is existing, future, accruing conditional or contingent and includes rents; profits; dues; a money award by an arbitrator; monies payable as salaries of employees; dividends; tolls, user-fees or any sum, by whatever name called; monies Payable under decrees; monies payable under guarantees; actionable claims and all kinds of actual or contingent monetary obligations; and excludes a right to payment of funds credited in a deposit account and right to payment under a negotiable instrument;

- (xl) **"Recovery Ordinance"** means the Financial Institutions (Recovery of Finances) Ordinance, 2001 (XI.VI of 2001);
- (xli) **"register"** means the electronic register set up under section 21;
- (xlii) **"registrar"** means the person in-charge of the Registry appointed under sub-section (1) of section 20 and shall include, unless the context requires otherwise, a deputy registrar discharging the functions, duties and powers of the registrar pursuant to sub-section (2) of section 20;
- (xliii) **"registration"** —
 - (a) in relation to a security interest created by an entity, means that a financing statement and modification statements in relation thereto, if any, have been registered in the register in respect of such security interest in accordance with the provisions of Part IV of this Act; or
 - (b) in relation to a security interest created by a company, means that a Form 10 and Form 16, if any, have been registered in the register of mortgages, and charges in respect of such security interest in accordance with the provisions of the Companies Ordinance, 1984 (XLVII of 1984);
- (xliv) **"registration number"** is the number assigned to a registered modification statement and termination statement by the register pursuant to clause (b) of sub-section (1) of section 22.
- (xlv) **"Registry"** means the Secured Transactions Registry established under section 19;
- (xlvi) **"secured creditor"** means a financial institution or a consortium of financial institutions in whose favour a security interest is created by the customer in respect of any finance and includes a trustee appointed by them;
- (xlvii) **"security agreement"** means an agreement, instrument or any other document in writing that creates or provides for a security interest in favour of a secured creditor;
- (xlviii) **"security interest"** means a right, title, encumbrance or interest of any kind upon movable property created or provided for by a security agreement in relation to a transaction that in substance secures the payment or performance of a customer's obligation under a finance

without regard to the form of the transaction or the terminology used by the parties or the identity of the person who has title to the movable property, and includes any charge, mortgage, hypothecation, fixed charge, floating charge, assignment, lien, pledge, assignment of receivables by way of security and transactions under which a secured creditor retains title such as a finance lease, hire purchase agreement, sale and lease back arrangement, conditional sale agreement and retention of title arrangement, having similar effect;

(xlix) **“statement”** means the financing statement, modification statement and termination statement;

(l) **“termination statement”** means the prescribed form to be filed in the register for the purposes of rendering a registered financing statement and modification statements in relation thereto, if any, ineffective;

(li) **“title document”** means a document in writing evidencing title to goods which is, by law or custom, negotiable, and includes a bill of lading, dock warrant, warehouse receipt, railway receipt, airway bill, truck receipts or similar record issued by a person in the business of transporting or storing goods;

(lii) **“unique registration number”** is the number assigned to a registered financing statement by the register pursuant to clause (a) of sub-section (1) of section 22;

(liii) **“value”** means the consideration that a person gives where such person acquires the rights —

(a) in return for a binding commitment to give finance;

(b) as security for, or satisfaction of, a pre-existing claim, in whole or in part;

(c) in return for a promise or anything given in exchange; and

(liv) **“vehicle registration number”** means the number assigned to a motor vehicle by the relevant registering authority for the purposes of registration of such motor vehicle under the Motor Vehicles Ordinance, 1965 (XIX of 1965);

(2) Words and expressions used but not defined herein shall, unless repugnant to the context, have the same meaning as is assigned to them under the Recovery Ordinance.

3. **Scope of Act.**—This Act shall not apply to or affect any of the following, namely:—

- (a) a security interest in any immovable property;
- (b) a security interest in a book-entry security;
- (c) a security interest created by operation of law, including but not limited to a lien on movable property under the Sale of Goods Act, 1930 (III of 1930) or the Contract Act, 1872 (IX of 1872), except for the purposes of determining priority of such security interests as set forth in Part V of this Act;
- (d) a security interest in any aircraft as defined in sub-clause (b) of section 2 of the Civil Aviation Ordinance, 1960 (XXXII of 1960); and
- (e) a security interest in any vessel as defined in sub-section (56) of section 2 of the Merchant Shipping Ordinance, 2001 (LII OF 2001).

Part II

Creation of Security Interests

4. **Right to create a security interest.**—(1) Subject to sub-section (2), a customer may create a security interest to secure its own obligation or that of another person in accordance with the provisions of this Act.

(2) A customer shall not create a security interest in exempted property and if created, such security interest shall be void.

5. **Effectiveness of a security interest.**—A security interest created in favour of a secured creditor shall be effective against the customer only if -

- (a) the customer and the secured creditor have agreed to create a security interest in favour of the secured creditor;
- (b) in the case of a pledge and security interests created pursuant to sections 11 and 12, the customer has also given possession of the collateral to the secured creditor;
- (c) the secured creditor has given value to the customer; and
- (d) the customer has rights in the collateral or the power to transfer rights in the collateral.

6. Security agreement.—(1) The secured creditor and the customer shall enter into a security agreement in terms of sub-section (2) for all security interests other than security interests created pursuant to sections 11 and 12.

(2) A security agreement shall state —

- (a) the name and address of the secured creditor and customer;
- (b) the obligations secured by the security interest;
- (c) a description of the collateral in a manner that reasonably allows its identification; and
- (d) the date of its execution.

7. Security interest in proceeds.—(1) A security interest shall extend to the proceeds of the collateral, unless the security agreement provides otherwise.

(2) A security interest in proceeds shall be effective against the customer whether or not the security agreement contains a description of the proceeds.

8. Security interest in commingled goods.—(1) A security interest shall extend to commingled goods, unless the security agreement provides otherwise.

(2) The security interest in the commingled goods shall be limited to the value of the collateral immediately before it became part of such commingled goods.

9. Security interest in after-acquired property.—(1) A security agreement may provide for a security interest in after-acquired property.

(2) Unless otherwise provided in a security agreement, the security interest shall attach to after-acquired property on the acquisition by the customer of rights in the after-acquired property.

10. Future finance.—(1) Subject to sub-section (2), a Security interest shall not extend to future finance that has not been committed to be extended to the customer at the time of the creation of security interest, unless the security agreement provides otherwise.

(2) Section 174 of the Contract Act, 1872 (IX of 1872) shall apply in the case of a pledge and a security interest in collateral covered by a title document created pursuant to section 11.

11. Security interest in collateral covered by a title document.—

(1) A security interest may be created in collateral covered by, a title document by giving possession to the secured creditor of the title document duly endorsed in favour of such secured creditor or issued in his name.

(2) A security agreement shall not be required where a security interest in collateral covered by a title document is created in accordance with sub-section (1).

Explanation.—Collateral shall be covered by a title document where such collateral is in the possession of the issuer of the title document.

12. Security interest in a negotiable instrument.—(1) A security interest may be created in a negotiable instrument by issuing it in the name of the secured creditor or negotiating it in favour of the secured creditor in accordance with the Negotiable Instruments Act, 1881 (XXVI of 1881).

(2) A security agreement shall not be required where a security interest in a negotiable instrument is created in accordance with sub-section (1).

(3) If a negotiable instrument is secured by movable property then unless otherwise agreed between the secured creditor and the customer, such security shall stand automatically transferred to and vest in the secured creditor upon creation of the security interest in terms of sub-section (1).

13. Security interest in a right to payment of funds credited in a deposit account.—Where the depositor bank is not the secured creditor, creation of a security interest in a right to payment of funds credited in a deposit account shall not bind or otherwise impose any obligation on the depository bank with respect to the security interest unless such security interest has been created with the prior written consent of such depository bank.

Part III

Perfection of Security interests

14. Perfection —(1) A security interest may be perfected —

- (a) in the case of a pledge created by a company, by possession of the collateral by the secured creditor;
- (b) in the case of a pledge created by an entity, by registration as provided under this Act; or

- (c) in the case of any other security-interest by registration as provided under this Act.
- (2) Notwithstanding sub-section (1) and subject to sub-section (3),—
 - (a) a security interest in a right to payment of funds credited in a deposit account may be perfected only by control;
 - (b) a security interest in collateral covered by a title document may be perfected only by possession of the title document by the secured creditor; and
 - (c) a security interest in a negotiable instrument may be perfected only by possession of the negotiable instrument by the secured creditor.

Explanation.—Perfection of security interests under clauses (a), (b) and (c) shall not require registration as provided under this Act.

(3) Sub-section (2) shall not be applicable where a security interest in a right to payment of funds credited in a deposit account or a security interest in collateral covered by title document or a security interest in a negotiable instrument is—

- (a) created as part of a hypothecation or floating charge that may otherwise be perfected by registration under clause (c) of sub-section (1); or
- (b) in the nature of proceeds of collateral that is otherwise perfected in accordance with section 15.

illustrations

- (a) Customer A (an entity) entered into a share pledge agreement with Secured Creditor B and delivered possession of the share certificates to Secured Creditor B on the 1st December. A financing statement was registered in the register in respect of the share pledge on the 3rd December. The share pledge was perfected by registration on the 3rd December.
- (b) Customer C (an entity) created a hypothecation on all present and after-acquired inventory in favour of Secured Creditor D on the 1st January. A financing statement was registered in the register in respect of the hypothecation on the 3rd January. The hypothecation was perfected by registration on the 3rd January.

- (c) Customer N (an entity) enters into an assignment agreement with Secured Creditor M on the 1st March pursuant to which Customer N assigns receivables under a supply agreement as security in favour of Secured Creditor M. A financing statement was registered in the register in respect of the assignment on the 3rd March. The assignment of receivables by way of security was perfected by registration on the 3rd March.
- (d) Customer G (an entity) leases a car from Secured Creditor H pursuant to a finance lease agreement on the 1st December. Secured Creditor H is registered as the owner of the car. A financing statement was registered in the register in respect of the finance lease on the 2nd December. The finance lease was perfected by registration on the 2nd December.
- (e) Customer F (a company) created a security interest in a right to payment of funds credited in a deposit account in favour of Secured Creditor G on the 1st December. The deposit account was maintained with the Depository Bank H. A control agreement was entered into between Customer F, Secured Creditor C and Depository Bank H on the 2nd December. The security interest in a right to payment of funds credited in a deposit account was perfected by control on the 2nd December.
- (f) Customer H (an entity) created a hypothecation on all its present and after-acquired movable property (including funds held in deposit accounts) in favour of Secured Creditor P on the 1st March. A financing statement in respect of the hypothecation was registered in the registration on the 4th March. The hypothecation was perfected by registration on the 4th March. In this case, the security interest in a right to payment of funds credited in a deposit account (created as part of the hypothecation) was also perfected by registration.
- (g) Customer M (a company) created a hypothecation over its equipment in favour of Secured Creditor N on the 5th April. The hypothecation extended to any proceeds received from the sale of the equipment with the prior authorization of Secured Creditor N.

A financing statement was registered in the companies' register of mortgages and charges on the 10th April in respect of the hypothecation. The hypothecation was perfected by registration on the 10th April.

The Secured Creditor N authorized in writing the sale of the equipment by Customer M on the 5th May which resulted in Customer M receiving

a cheque of one hundred thousand rupees in the form of proceeds arising from the sale of such equipment.

In this case, Secured Creditor N's security interest in the cheque of one hundred thousand rupees (a negotiable instrument) was also perfected by registration on the 10th April.

15. Perfection in after-acquired property, proceeds and commingled goods.—(1) A security interest in after-acquired property, proceeds or commingled goods, where applicable, shall stand automatically perfected by virtue of the perfection of the security interest in the collateral.

(2) Where a security interest is perfected by registration as provided under this Act, sub-section (1) shall not apply if the after acquired property, non-cash proceeds or commingled goods, as applicable, is not covered in the registered financing statement or Form 10, as applicable.

Explanation.—For the purposes of sub-section (2), non-cash proceeds shall include all proceeds other than money, cheques, funds credited in a deposit account or the like.

16. Specialized registry.—A security interest in intellectual property that requires registration in a specialized registry pursuant to any other law currently in force, may, notwithstanding the provisions of such law, be perfected only by registration as provided under this Act.

17. Unperfected security interests.—A security interest that is not perfected shall be *void* against the liquidator, administrator or receiver but shall not prejudice the secured creditor's right to repayment of finance as an unsecured creditor.

Part IV

Registration

18. Application of this Part.—(1) This part shall apply only to an entity creating a security interest.

(2) This Part of the Act shall not apply to a company and shall not affect the provisions contained in the Companies Ordinance, 1984 (XLVII of 1984) requiring registration of security interests created by a company.

19. Secured Transactions Registry.—(1) The Federal Government shall, by notification in the official Gazette, establish or cause to be established a

registry to be known as the 'Secured Transactions Registry' for the purposes of registration of security interests created by an entity and all matters incidental thereto.

(2) The Federal Government shall, by notification in the official Gazette, specify the date from which the Registry established under subsection (1) shall be operational.

(3) The head office of the Registry, established under sub-section (1) and made operational under sub-section (2), shall be at such place as the Federal Government may specify and the Federal Government may, if considered necessary, establish branch offices of the Registry at such other places as the Federal Government deems fit for the purposes of facilitating registration of security interests created by an entity and to perform any or all of the functions of the Registry, as may be determined by the Federal Government.

(4) The Federal Government may, by notification in the official Gazette, define the territorial limits within which an office of the Registry may exercise its functions.

(5) The Registry shall have its own seal.

20. Appointment of registrar, deputy registrars and other officers.—

(1) The Federal Government shall, by notification, appoint a registrar as the head of the Registry for the purposes of managing and controlling the register set up pursuant to section 21 and such other functions as may be determined by the Federal Government, on such terms and conditions as it may think fit:

Provided that the registrar shall be (a) a Government officer not below BS 21; or (b) a retired judge of the supreme Court of Pakistan or any High Court; or (c) an eminent professional from private sector of known integrity and competence with qualification and experience of at least ten years in the private sector in the field of finance, banking, business or law.

(2) The Federal Government may, by notification in the official Gazette, appoint deputy registrars for each branch office of the Registry to perform, under the control and superintendence of the registrar such functions, duties and powers of the registrar under this Act as may be notified by the Federal Government.

(3) The registrar may appoint such other officers with such designations as he may think fit for the purposes of discharging, under the superintendence and direction of the registrar, such functions, duties and powers under this Act as may be determined by the registrar.

21. **Register of security interests.**—(1) A register shall be maintained in electronic format at the head office of the Registry to record statements in relation to security interests created by an entity.

(2) The register shall be maintained and operated under control and management of the registrar.

(3) The register shall be operated using an automated information system which shall —

- (a) allow a secured creditor to file a statement in terms of sections 23, 24 and 26;
- (b) allow a secured creditor to file a security agreement and any amendments thereto in terms of section 25;
- (c) reject filing of a statement in terms of section 28;
- (d) issue a verification statement in terms of section 29;
- (e) allow a person to search the register in terms of section 33;
- (f) issue search reports under sub-section (3) of section 33;
- (g) allow a secured creditor to pay the prescribed fees, if any, for filing statements in the register;
- (h) allow a person to pay the prescribed fees for searching the register in terms of section 33;
- (i) allow an entity or any person having rights in the collateral to file an application under sub-section (3) of section 31; and
- (j) allow a person to do such other things as are required or permitted by, or under, this Act to be done by a person in relation to the register.

(4) The registrar may, by way of regulations, prescribe requirements for the use of the register for any or all acts under sub-section (3).

22. **Organization of the register.**—(1) The register shall assign —

- (a) a unique registration number to each registered financing statement; and

- (b) a registration number to each registered modification statement and termination statement relating to a registered financing statement under clause (a) in a manner that associates them with the unique registration number assigned to such registered financing statement.
- (2) The register shall index registered financing statements by —
 - (a) the name of the entity;
 - (b) where the entity is a natural person, the National identity Card number or National Identity Card for Overseas Pakistanis number, or in the case of a foreign national, the passport number;
 - (c) the vehicle registration number; and
 - (d) the unique registration number.

23. **Financing statement.**—(1) The secured creditor may, in respect of a security interest, file a financing statement in the register.

(2) The financing statement shall be in such form as may be prescribed by rules and contain the following particulars of a security interest:

- (a) name of the entity;
- (b) address of the entity;
- (c) type of the entity;
- (d) where the entity is a natural person, the National Identity Card number or National Identity Card for Overseas Pakistanis number, or in the case of a foreign national, the passport number;
- (e) name and address of the secured creditor;
- (f) type of the security interest;
- (g) maximum amount secured by the security interest;
- (h) description of the collateral, including the vehicle registration number in case of a motor vehicle, and its proceeds, where applicable; and
- (i) in case of a floating charge, the nature of restriction, if any, on the power of the entity to create further security interests over all or part of the collateral.

(3) A financing statement may be filed only after the secured creditor and the entity have entered into a security agreement and the secured creditor shall be deemed to have been authorized by the entity to file such financing statement by virtue of the entity executing the security agreement.

24. Modification of a registered financing statement.—(1) The secured creditor may, in relation to a registered financing statement, file a modification statement in the register in respect of —

- (a) transfer of all or part of the security interest to which the registered financing statement relates;
- (b) change in description of collateral;
- (c) addition or omission of collateral;
- (d) change in maximum amount secured by the security interest;
- (e) change in name of the entity;
- (f) change in address of the entity;
- (g) where the entity is a natural person, change in the National Identity Card number or National identity Card for Overseas Pakistanis number, or, in case of a foreign national, passport number;
- (h) change in type of the entity;
- (i) change in name or address of the secured creditor; or
- (j) any other alteration to the information contained in the registered financing statement.

(2) The modification statement shall be in such form as may be prescribed by rules and contain the following particulars, namely:—

- (a) unique registration number; and
- (b) nature of modification to the registered financing statement.

(3) The filing of the modification statement by the secured creditor under sub-section (1) shall not require authorization in writing by the entity, unless the modification is in respect of an increase in the maximum amount

secured by the security interest or is in respect of an addition of collateral or otherwise increases the exposure of the entity to the secured creditor.

25. Filing of security agreement.—A secured creditor may, in respect of a security interest, file a security agreement and any amendments thereto in the register as an attachment to a financing statement or a modification statement, as applicable.

26. Termination of a registered financing statement.—(1) A secured creditor shall, in relation to a registered financing statement, file a termination statement in the register within fifteen working days from the date of payment or satisfaction, in full, of the obligation to which the registered financing statement relates.

(2) The termination statement shall be in such form as may be prescribed by rules and contain the following particulars, namely:—

- (a) unique registration number; and
- (b) date on which the obligation was paid or satisfied, in full.

27. Effectiveness of filing.—A statement shall stand registered when a unique registration number or registration number, as applicable, date and time is assigned to it in the register and such statement becomes publicly searchable.

28. Rejection of filing.—A statement shall not be registered, if —

- (a) the particulars required to be entered in a statement are incomplete; or
- (b) the secured creditor has failed to pay the prescribed fee, if any, for filing the statement in the register.

29. Verification statement.—(1) In respect of a registered statement, a verification statement shall be issued to the secured creditor in such form as may be prescribed by rules and contain the following information:

- (a) unique registration number or registration number, as applicable;
- (b) particulars as stated in the statement; and
- (c) date and time on which the statement was registered.

(2) The verification statement shall be conclusive evidence that a statement has been registered in accordance with the requirements of Part IV of this Act.

30. Ineffectiveness of a registered financing statement and modification statement.—(1) A registered financing statement shall be ineffective, if—

- (a) particulars of an entity under clauses (a) and (d) of sub-section (2) of section 23 are stated, incorrectly such that a search of the register would not retrieve the registered financing statement;
- (b) description of the collateral is stated insufficiently such that a search of the register would not reveal the same collateral, provided that the registered financing statement shall be ineffective only to the extent of the collateral which has been insufficiently described and will not render the registered financing statement ineffective with respect to other collateral sufficiently described;
- (c) the vehicle registration number is stated incorrectly such that a search of the register would not retrieve the registered financing statement;
or
- (d) the entity has not entered into a security agreement with the secured creditor as required under sub-section (3) of section 23.

(2) if the secured creditor fails to file a modification statement in relation to a registered financing statement respect of a change under clause (e) or (g) as required under sub-section (1) of section 24 within ten days of acquiring actual knowledge of such change by the entity, the registered financing statement shall be ineffective against

- (a) a competing security interest that has been perfected after such change but before filing of the modification statement by the secured creditor;
and
- (b) a purchaser, lessee or licensee acquiring rights in the collateral after such change but before filing of the modification statement by the secured creditor.

(3) A registered modification statement shall be ineffective if it has been filed without the authorization in writing by the entity where such authorization is required under sub-section (3) of section 24.

31. Rectification of register.—(1) The entity or any person having rights in the collateral covered in a registered financing statement may give a written demand to the secured creditor to —

(a) file a modification statement, if —

- (i) description of the collateral is insufficient or refers to movable property that is not collateral under the security agreement;
- (ii) the vehicle registration number is incorrect;
- (iii) the secured creditor has agreed to release part of the collateral and has failed to file a modification statement in respect thereof as required under sub-section (1) of section 24; or
- (iv) there is any other omission or misstatement of any particular in a registered financing statement that detrimentally affects rights of the entity;

(b) file a termination statement, if —

- (i) the obligation to which the registered financing statement relates has been paid or satisfied, in full, and the secured creditor has failed to file a termination statement within the prescribed period under sub-section (1) of section 26; or
- (ii) the entity has not entered into a security agreement with the secured creditor as required under sub-section (3) of section 23.

(2) A demand under sub-section (1) shall require the secured creditor to file, at its own expense, a modification statement or termination statement, as applicable, within fifteen days from the date of receiving such demand.

(3) if the secured creditor fails to file a modification statement or termination statement, as applicable, within fifteen days of receiving the demand under sub-section (1), the entity or person making the demand may, by filing an application in writing, request the registrar to file such modification statement or termination statement, as applicable, along with a copy of the written demand and response, if any, from the secured creditor.

(4) On receipt of an application under sub-section (3), the registrar shall cause a written notice to be sent to the secured creditor calling upon him to show cause, within a time not exceeding twenty days from the date of receiving such notice, as to why the modification statement or termination statement, as applicable, should not be filed.

(5) The registrar shall, if no cause is shown, file the modification statement or termination statement, as applicable, in the register.

(6) Where cause is shown, the registrar Shall inform the entity or person making the demand under sub-section (3) in writing that the modification statement or termination statement, as applicable, cannot be filed for reasons stated therein.

32. Removal of a registered financing statement.—(1) A registered financing statement and any modification statements in relation thereto shall be removed from the register after thirty days from the date on which a termination statement has been filed in the register in respect of such registered financing statement pursuant to section 26 or section 31.

(2) upon removal from the register, the registered financing statement and any modification statements in reaction thereto shall not be publicly searchable.

(3) Notwithstanding removal from the register the Registry shall retain records of a registered financing statement and any modification statement and termination statement in respect thereof for a period of ten years from the date on which the termination statement was filed pursuant to section 26 or section 31.

33. Right to search the register.—(1) Any person shall be entitled to search the register and obtain reports therefrom on payment of a prescribed fee.

(2) The register may be searched by reference to the following criteria, namely:—

- (a) name of the entity;
- (b) where the entity is a natural person, the National identity Card Number or National Identity Card for Overseas Pakistanis number, or in case of a foreign national, the passport number;
- (c) unique registration number;
- (d) the vehicle registration number; or
- (e) any other criteria prescribed by regulations.

(3) On a search of the register, a search report shall be issued in such form as may be prescribed by rules and shall set forth all registered financing statements and modification statements in relation thereto in the register relating to the search criterion used:

Provided that where the search does not produce any results, the search report shall state and confirm that there are no registered financing statements relating to the search criterion used.

(4) A search report issued under sub-section (3) shall be conclusive evidence of the registered financing statements and modification statements in relation thereto to which the search relates including—

- (a) unique registration number or registration number, as applicable, date and time on which the financing statements and modification statements in relation thereto were registered; and
- (b) order of the registered financing statements and modification statements in relation thereof set out in the search report.

34. **Outsourcing.**—The Federal Government may issue a licence to any local or foreign entity for operating and maintaining the register or for performing any of the functions of the Registry in respect of the register.

Part V

Priority of Security Interests

Chapter I

General Priority Rules

35. **Priority of security interests in the same collateral where there is no other way of determining priority.**—Unless otherwise provided in this Part V, the following rules shall apply, to determine priority of security interests over the same collateral, namely:—

- (a) between security interests that have not been perfected, the first in time to create the security interest shall prevail;
- (b) a perfected security interest has priority over a security interest that has not been perfected; and
- (c) between perfected security interests, the first in time to perfect the security interest in accordance with section 14 shall prevail.

Explanations.—

- (i) Between security interests that have been perfected by registration as provided under this Act, priority will be determined by the order of registration.

- (ii) Between security interests that have been perfected by possession or control, priority will be determined by the order of possession or control.
- (iii) Between a security interest that has been perfected by registration as provided under this Act and a security interest that is perfected otherwise than by registration, priority will be determined by the order of registration or perfection otherwise than by registration, whichever occurs first.

36. **priority of security interest in proceeds.**—A security interest in proceeds shall have the same priority as the security interest in the collateral.

37. **Priority extending to future finance.**—Where a security interest extends to future finance, the security interest shall have the same priority in respect of existing and future finance.

38. **Priority of security interest in after-acquired property.**—The priority of a security interest that is perfected by registration as provided under this Act shall extend to all the collateral stated in the registered financing statement or Form 10, as applicable, regardless of whether it is present or after-acquired property.

39. **Extent of priority.**—(1) The priority of a security interest that is perfected by registration as provided under this Act is limited to the maximum amount secured by the security interest as stated in the registered financing statement or Form 10, as applicable.

(2) Where the maximum amount secured by the security interest as stated in the registered financing statement or Form 10, as applicable, is increased by way of a registered modification statement or Form 16, the priority of the security interest in respect of such increase shall be from the date the modification statement or Form 16, as applicable, was registered.

(3) Where a modification statement or Form 16, as applicable, has been registered in respect of an addition of collateral, other than by way of proceeds, the priority of the security interest in respect of such additional collateral shall be from the date the modification statement or Form 16, as applicable, was registered.

40. **Subordination.**—An agreement may be entered into between secured creditors of a customer or between a secured creditor and a customer pursuant to which one secured creditor subordinates his security interest to the security interest of another secured creditor.

41. Right of secured creditor to follow the collateral.—(1) Unless otherwise provided in Chapter III of this Part of this Act, if a customer transfers, leases or licenses collateral that is, at the time of transfer, lease or licence, subject to a perfected security interest, the transferee, lessee or licensee shall acquire the collateral subject to such perfected security interest.

(2) A secured creditor's right to follow the collateral under sub-section (1) shall be without prejudice and in addition to the secured creditor's right to the proceeds of the collateral, where applicable.

CHAPTER II

SPECIAL PRIORITY RULES

42. Priority of security interest based on retention of title arrangement.—(1) A security interest based on retention of title arrangement and perfected by registration as provided under this Act within ten days of the date of the security agreement shall have priority Over all other competing security interests in the same collateral irrespective of the time of perfection of such competing Security interests.

(2) Sub-section (1) shall be applicable only where the collateral is a motor vehicle or such other movable property as may be notified by the Federal Government for the purposes of this section.

Illustration

Secured Creditor A has a hypothecation on all present and after-acquired movable property of Customer B (an entity) that was perfected by registration in the register on 1st December.

Customer B leases a car from Secured Creditor C pursuant to a finance lease agreement on 1st February. The ownership of the car is registered in the name of the Secured Creditor C. Secured Creditor C also perfects its security interest in the car by registration in the register on 4th February.

Secured Creditor C will have priority over Secured Creditor A.

43. Priority between secured creditor and bailee providing services in respect of the collateral.—A secured creditor shall have priority over a bailee having a lien in respect of the collateral under section 170 of the Contract Act, 1872 (IX of 1872), provided the security interest was perfected before the bailment was created.

44. **Priority between secured creditor and unpaid seller.**—An unpaid seller having a lien in respect of the collateral under the Sale of Goods Act, 1930 (III of 1930) shall have priority over a secured creditor.

45. **Priority between secured creditor and a bank having a bankers' lien.**—A bank having a bankers' lien under section 171 of the Contract Act, 1872 (IX of 1872) shall have priority over a secured creditor unless such bank has in writing waived of its bankers' lien.

46. **Priority of security interest in a right to payment of funds credited in a deposit account.**—(1) A security interest in a right to payment of funds credited in a deposit account that is perfected by control has priority as against a security interest in a right to payment of funds credited in a deposit account that is perfected other than by control pursuant to sub-section (3) of section 14.

(2) A depository bank's right of set-off against the customers obligations shall have priority over a security interest in the right to payment of funds credited in a deposit account unless the depository bank has, in terms of the control agreement, waived of its right of set-off.

(3) Sub-section (2) shall not in any way affect the depository bank's right of set-off under the insolvency laws.

Illustrations

- (a) Secured Creditor A has a security interest in a right to payment of funds credited in a deposit account of Customer B (a company) that was perfected by control on the 25th December.

Secured Creditor C. has a hypothecation on all the present and after-acquired movable property (including funds credited in deposit accounts) of be that was perfected by registration on the 1st December.

Secured Creditor A shall have priority over Secured Creditor C.

- (b) Secured Creditor A has a security interest in, a right to payment of funds credited in a deposit account of Customer B (an entity) that was perfected by control on the 25th December.

Secured Creditor C has a floating charge on Customer B's present and after-acquired inventory that was perfected by registration on the 1st December. Secured Creditor C's floating charge shall extend to the proceeds, *i.e.* sale proceeds of inventory that are credited in a deposit account over which Secured Creditor C has no control.

Secured Creditor A shall have priority over Secured Creditor C.

47. Priority of security interest in collateral covered by title document.—A security interest in collateral covered by title document that is perfected by possession has priority as against a security interest in collateral covered by title document that is perfected other than by possession pursuant to sub-section (3) of section 14.

Illustration

Secured Creditor A has a security interest in collateral covered by a title document of Customer B (an entity) that was perfected by possession on the 25th December.

Secured Creditor C has a hypothecation on all the present and after-acquired movable property (including goods-in-transit covered by title documents) of Customer B that was perfected by registration on the 1st December.

Secured Creditor A shall have priority over Secured Creditor C.

48. Priority between a perfected floating charge and fixed charge over the same collateral.—(1) Subject to sub-section (2), a fixed charge perfected after an earlier perfected floating charge over the same collateral shall have priority so long as such floating charge has not crystallized into a fixed charge.

(2) An earlier perfected floating charge shall have priority over a subsequently perfected fixed charge over the same collateral, where —

- (a) the security agreement creating such floating charge contains a provision prohibiting the creation of any further security interest over the same collateral; and
- (b) the secured creditor taking a subsequent fixed charge over the same collateral has notice of the provision in clause (a).

(3) if the restriction under clause (a) of sub-section (2) is stated in the registered financing statement or Form 10, as applicable, the secured creditor taking a subsequent fixed charge over the same collateral shall be deemed to have notice of such provision.

49. Priority of security interest in a negotiable instrument.—(1) A security interest in a negotiable instrument that is perfected by possession has priority as against a security interest in a negotiable instrument that is perfected other than by possession pursuant to sub-section (3) of section 14.

(2) A security interest in a negotiable instrument is subordinate to the rights of a holder in due course as defined in section 9 of the Negotiable instruments Act, 1881 (XXVI of 1881).

Illustrations

- (a) Secured Creditor A has a security interest in a negotiable instrument issued in favour of Customer B (an entity) that was perfected by possession on the 25th December.

Secured Creditor C has a hypothecation on all the present and after-acquired movable property (including right to payment under negotiable instruments) of Customer B that was perfected by registration on the 1st December.

Secured Creditor A shall have priority over Secured Creditor C.

- (b) Secured Creditor A has a security interest in a negotiable instrument of Customer B (a company) that was perfected by possession on the 25th December.

Secured Creditor C has a floating charge on Customer B's present and after-acquired inventory that was perfected by registration on the 1st December. Secured Creditor C's floating charge extends to proceeds, i.e. sale proceeds of inventory that may be in the form of a negotiable instrument of which the Secured Creditor C will have no possession.

Secured Creditor A shall have priority over Secured Creditor C.

CHAPTER III

TAKING FREE OF SECURITY INTEREST

50. Purchaser taking free of security interest.—(1) A purchaser for value will acquire collateral (other than a negotiable instrument or collateral covered by title document) free of any security interest, where the customer —

- (a) sells the collateral in ordinary course of business, provided that the customer shall not conduct a bulk sale of collateral without the prior written consent of the secured creditor.

Explanation: Unless otherwise provided in the security agreement, a bulk sale shall mean any transfer of all or major part of the collateral

of a customer or of the collateral held at a particular place of business of a customer; or

- (b) is authorized in writing by the secured creditor to sell the collateral free of the security interest.

(2) A purchaser for value shall not acquire collateral free of security interest under clause (a) of sub-section (1) if, at the time of the acquisition, the purchaser has actual knowledge that the sale of the collateral is prohibited under the security agreement.

51. Rights of a lessee and licensee.—(1) The rights of a lessee and licensee in the collateral are not affected by a security interest where the customer —

- (a) leases or licenses the collateral in ordinary course of its business; or
- (b) is authorized in writing by the secured creditor to lease or license the collateral.

(2) Clause (a) of sub-section (1) shall not apply if, at the time of the conclusion of the lease or licence agreement, the lessee or licensee has actual knowledge that the lease or licence of the collateral is prohibited under the security agreement.

52. Transferee of funds held in a deposit account taking free of security interest.—Where the customer has initiated a transfer of funds from a deposit account that is subject to a security interest, the transferee of the funds takes the funds free of any security interest unless the transferee had actual knowledge that the funds transfer is prohibited under the security agreement.

PART VI

ASSIGNMENT OF RECEIVABLES

53. Assignment of receivables by way of security and absolute.—

(1) An assignor may for value assign its rights, title, interests and benefits in receivables to an assignee in writing.

(2) An assignment of receivables may be absolute or by way of security for the performance of the customer's obligations.

(3) Upon an assignment of receivables under sub-section (1), —

- (a) the rights and remedies of the assignor, whether by damages or otherwise, shall vest in the assignee; and
- (b) the assignee may sue or institute proceedings in respect of the assignment of receivables in his own name without obtaining the assignor's consent to such suit or proceedings and without making him a party thereto.

(4) Notwithstanding section 5 of the Transfer of Property Act, 1882 (IV of 1882), an assignment of receivables may be of future receivables and such future receivables shall vest in the assignee on the acquisition of the receivables by the assignor.

Explanation.—Future receivables are receivables that are generated as a result of a contract that is concluded after the conclusion of the agreement assigning the receivables.

(5) If the receivables to be assigned are secured by movable property, then, unless otherwise agreed between the assignor and assignee, such security shall stand automatically transferred to and vest in the assignee upon assignment.

(6) The rights of an assignee in respect of the assigned receivables are subject to —

- (a) all defences and right to set-off arising from the original contract between the account debtor and the assignor that the account debtor could have asserted against the assignor:

Provided that the assignee shall, unless otherwise agreed with the assignor, be entitled to recover from the assignor, any loss suffered by it as a result of the account debtor exercising any such defences and right to set-off; and

- (b) any rights to set-off that the account debtor could have asserted against the assignor in respect of claims against the assignor accruing before the account debtor received notice in writing of the assignment.

(7) Sub-section (6) shall not apply if the account debtor has agreed in writing with the assignor that it shall not assert any defences or right to set-off,

54. Assignment of receivables by way of security.—(1) The provisions of Part II, III, V, VII, VIII and IX of this Act shall apply *mutatis mutandis* to an assignment of receivables by way of security.

(2) An account debtor shall be bound by the terms and conditions of the assignment of receivables by way of security, provided the account debtor has received notice in writing of such assignment in terms of sub-section (3) or has consented to the assignment of receivables in writing.

(3) The notice to be given under sub-section (2) to the account debtor may be given by the assignor or assignee and shall at the minimum —

- (a) state name and address of the assignor;
- (b) state name and address of the assignee; and
- (c) identify the receivables assigned.

(4) Unless otherwise provided in the security agreement, if the receivables assigned by way of security are received by the assignor or recovered by the assignee, it shall be applied in the following order:

- (a) in or towards payment of the cost of such recovery;
- (b) in or towards the satisfaction of the amount of the security interest; and
- (c) the residual, if any, to the assignor or any other person entitled to receive the same.

55. Absolute assignment of receivables.—(1) An account debtor shall be bound by an absolute assignment and have a duty to make payment to the assignee where the account debtor has received notice in writing of such assignment in terms of sub-section (2) or has consented to the assignment of receivables in writing.

(2) The notice to be given under sub-section (1) to the account debtor may be given by the assignor or assignee and shall at the minimum —

- (a) state name and address of the assignor;
- (b) state name and address of the assignee;
- (c) identify the receivables assigned; and
- (d) require the account debtor to pay the assignee in accordance with payment instructions stated therein.

(3) If an account debtor has not been given notice, under sub-section (1), of the absolute assignment of receivables, he shall be entitled to make payments to the assignor in respect of the assigned receivables in accordance with the original contract between the account debtor and the assignor and such payment shall fully discharge the account debtor:

Provided that payment made to the assignor in respect of such receivables shall be held in trust for the benefit of the assignee and the assignor shall forthwith make payment of such amount to the assignee or its agent duly authorised in this behalf, unless otherwise agreed between the assignor and assignee.

(4) Nothing in this Act shall prejudice an assignee's right to enforce an absolute assignment of receivables without the intervention of the courts.

56. Applicability of the Transfer of Property Act, 1882 (IV of 1882).—Sections 130, 131, 132 and 134 of the Transfer of Property Act, 1882 (IV of 1882) shall not apply to an assignment of receivables under this Act.

PART VII

ENFORCEMENT OF SECURITY INTERESTS

57. Modes of enforcement.—A secured creditor may, after an occurrence of an event of default, enforce security interest in accordance with section 58 or 59.

58. Recovery suit.—(1) A secured creditor may enforce a security interest by filing a recovery suit against the customer in the Banking Court.

(2) The provisions of the Recovery Ordinance shall apply *mutatis mutandis* for the purposes of filing a recovery suit against the customer.

Explanation.—The provisions of the Recovery Ordinance relating to the enforcement of a mortgage over immovable property shall not be applicable.

59. Other enforcement modes.—(1) A Secured creditor may enforce the following security interests without the intervention of the courts:

- (a) a pledge;
- (b) an assignment of receivables by way of security;
- (c) a security interest in a negotiable instrument that is perfected by possession;

- (d) a security interest in a right to payment of funds credited in a deposit account that is perfected by control;
- (e) a security interest in a motor vehicle based on retention of title arrangement; and
- (f) a security interest in a title document that is perfected by possession.

(2) At any time after a secured creditor decides to enforce a pledge after an occurrence of an event of default, the secured creditor may give a written notice of demand to the customer in writing and require the customer to satisfy his obligation within fourteen days from the date of receipt of the notice. The notice shall give details of the amount payable by the customer and specify the collateral that may be enforced in the event of the customer failing to satisfy his obligation:

Provided that the secured creditor may dispense with such notice if—

- (a) in the reasonable opinion of the secured creditor, the collateral is in danger of being wasted, misappropriated or is perishable; or
- (b) the amount of finance exceeds ten million rupees and the security agreement provides for such dispensation.

(3) The right to enforce an assignment of receivables by way of security and a security interest in a negotiable instrument in terms of this section includes the right to enforce any security over movable property or a mortgage of immovable property by deposit of title deeds as provided in sub-section (f) of section 58 of the Transfer of Property Act, 1882 (IV of 1882) that secures the payment of the receivables or the negotiable instrument.

(4) In case of a security interest in a right to payment of funds credited in a deposit account, the secured creditor shall —

- (a) where such secured creditor is the depository bank, be entitled to appropriate and set-off the funds credited in the deposit account against the customer's obligation; or
- (b) where such secured creditor is not the depository bank, be entitled to instruct the depository bank to pay the funds credited in the deposit account to or for the benefit of the secured creditor in terms of the control agreement.

(5) Nothing in this Act shall prejudice a secured creditor's right to enforce a security interest without the intervention of the courts under any other law for the time being in force.

60. Enforcement where collateral is in the nature of property attached to immovable property.—(1) If the collateral is in the nature of property attached to immovable property, the secured creditor may, upon enforcement of the security interest in accordance with the provisions of this Part, remove such property and shall reimburse the mortgagee or owner of the immovable property to which such property is attached for the cost of repair of any damage to the immovable property resulting from the removal:

Provided that the secured creditor shall not be required to reimburse the mortgagee or owner of the immovable property for any reduction in value of the immovable property resulting from the removal of the property attached to immovable property.

(2) The secured creditor shall be entitled to recover from the customer any expenses incurred by him for the purposes of removing the property attached to immovable property.

61. Fresh election of directors on request of the secured creditor.—Notwithstanding anything contained in the Companies Ordinance, 1984 (XLVII of 1984); where a secured creditor acquires twenty percent or more of the voting securities of a company in his own name upon enforcement of a pledge of securities, he may require the company to hold a fresh election of directors in accordance with the procedure laid down in section 178 of the Companies Ordinance, 1984 (XLVII of 1984) within sixty days of the secured creditor requesting the same.

PART VIII

RIGHTS AND OBLIGATIONS OF SECURED CREDITOR AND CUSTOMER

62. Duties of customer in case of a non possessory security interest.—(1) A customer shall exercise as much care in the custody, preservation, operation, maintenance, use or other enjoyment or exploitation of collateral in the customer's possession as a man of ordinary prudence would as if the collateral had been free of any security interest and shall not take any action, directly or indirectly, that may waste, misappropriate or otherwise prejudice the value of the collateral.

(2) A customer shall be liable to the secured creditor for any loss or damage to the collateral as a result of a breach of the obligations under sub-section (1).

(3) Subject to the terms of the security agreement, the secured creditor and its agents shall have the right to inspect value, insure, superintend, take samples and particulars of the collateral and to check any statements, accounts reports and information pertaining to the collateral.

63. Duties of secured creditor in case of a pledge and security interest in collateral covered by a title document.—Sections 150, 151, 152, 153, 154, 155, 156, 157, 173 and 175 of the Contract Act, 1872 (IX of 1872) shall apply *mutatis mutandis* to a secured creditor in the case of a pledge or a security interest in collateral covered by a title document.

64. Material information from secured creditor.—(1) The customer may send a written demand to the secured creditor to provide material information in respect of a security interest.

(2) A secured creditor shall, upon receiving a written demand under sub-section (1), provide the material information to the customer within fourteen days of receiving the demand.

(3) A secured creditor may charge the customer a reasonable fee for responding to a written demand under sub-section (1) provided that such fee shall not exceed the cost of processing such demand.

(4) For the purposes of this section, material information shall mean —

- (a) a copy of the security agreement and any amendments thereto.
- (b) a statement in writing of the amount of the aggregate outstanding obligation of the customer secured by the collateral as of the date specified in the written demand under sub-section (1); and
- (c) a statement in writing that approves or corrects an itemized list of what the customer believes to be the collateral securing an obligation as of the date specified in the written demand under sub-section duly authenticated by the customer.

PART IX

MISCELLANEOUS PROVISIONS

65. Notice.—(1) A notice or demand required to be given pursuant to any provision in Part IV of this Act may be given to the secured creditor or entity, as applicable, through courier or registered post with acknowledgement due at the address provided in the registered financing statement.

(2) A notice or demand given in accordance with sub-section (1) shall be deemed to have been given and received —

(a) on the day of actual delivery, where the notice is sent by a courier; or

(b) four days after the notice has been posted, where the notice is sent by registered post with acknowledgement due.

(3) The registrar may prescribe by regulations additional modes of providing a notice or demand to the secured creditor or entity, as applicable, pursuant to any provision in Part IV of this Act and matters ancillary thereto.

66. Provisions of insolvency laws not affected.—(1) If a customer becomes insolvent, the same rules shall prevail and be observed with regard to the priority of debts upon the distribution of the insolvent customer's estate, the respective rights of the secured and unsecured creditors and to debts provable as are in force for the time being under the applicable insolvency laws:

Provided that a secured creditor shall have the right to stand outside insolvency proceedings and enforce his security interest for the repayment of finance and such right shall, save as is provided in sub-section (2), not be subject to any preferential claim, whether arising before or after the creation of the security interest, by any person or authority.

(2) Preferential claims by any person or authority shall have priority over the claim of a secured creditor having a floating charge, so far as the assets of the customer available for payment of unsecured creditors are insufficient to meet such preferential claims.

Explanation.—For the purposes of sub-section (2), a fixed charge created upon crystallization of a floating charge shall be treated as a floating charge.

67. Protection of action taken in good faith.—No suit claim or other legal proceedings shall lie against the Registry or the registrar, deputy registrar or officers, staff and other employees of the Registry in respect of anything which is done or omitted to be done in good-faith under this Act or any rules and regulations made thereunder.

68. The provisions of this Act to override other laws.—(1) The provisions of this Act shall be in addition to, and not, save as expressly provided in this Act, in derogation of any other law for the time being in force.

(2) In the event of any inconsistency or conflict between the provisions of this Act and any other law for the time being in force including but not limited to the Companies Ordinance, 1984 (XLVII of 1984), Recovery Ordinance, Contract Act

1872 (IX of 1872), Transfer of Property Act, 1882 (IV of 1882), Specific Relief Act, 1877 (I of 1877), Sale of Goods Act, 1930 (III of 1930), and General Clauses Act, 1897 (X of 1897), the provisions of this Act shall prevail.

69. Power to remove difficulties.—If any difficulty arises in giving effect to the provisions of this Act, the Federal Government may, by order published in the official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to be necessary for removing such difficulty.

70. Power to make rules.—(1) The Federal Government may, by notification in the official Gazette, make rules, not inconsistent with the provisions of this Act, for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the power in sub-section 70, the Federal Government may make rules in respect of the following matters, namely:—

- (a) the forms of the statements to be used for the registration of security interests under Part IV of this Act, instructions for filling in such statements and ancillary matters in respect thereof;
- (b) description of collateral to be included in the security agreement under clause (c) of sub-section (2) of section 6;
- (c) the terms and conditions of the appointment and service of the registrar, deputy registrars, officers, staff and other employees of the Registry; and
- (d) any other matter which has to be, or may be, prescribed by rules.

71. Public Servants.—(1) The registrar, deputy registrars, officers, employees of the Registry and other person authorized to perform or exercise any function or power under this Act or rendering services to the Registry as consultant or adviser shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal code, 1860 (Act XLV of 1860).

(2) Save as otherwise provided by this Act and only for the purposes so provided, nothing herein contained shall be construed to mean that any person referred to in sub-section (1) is or shall be deemed to be in the service of Pakistan or is to be regarded or treated as a civil servant.

72. Power to make regulations.—(1) The registrar may, by notification in the official Gazette, make regulations, not inconsistent with the provisions of this Act and the rules made thereunder, for carrying out the purposes of Part IV of this Act.

(2) In particular, and without prejudice to the generality of the power in sub-section 1, the registrar may make regulations in respect of the following matters, namely:—

- (a) amount and mode of payment of fees payable for filing statements in the register, searching the register and other services to be rendered by the Registry under Part IV of this Act as are commensurate with the cost of providing such services;
- (b) form and manner in which applications to the registrar under the provisions of Part IV are to be submitted and ancillary matters in respect thereof;
- (c) modes of providing a notice or demand to the secured creditor or entity, as applicable, pursuant to any provision in Part IV and ancillary matters in respect thereof;
- (d) procedure and terms and conditions for the use of the electronic register under sub-section (4) of section 21;
- (e) procedure and requirements for searching the register under section 33 and ancillary matters in respect thereof; and
- (f) any other matter relating to registration of security interests under Part IV of this Act which has to be, or may be, prescribed by regulations;

73. Transitional provisions.—(1) For the purposes of this section, —

- (a) “prior security interest” means a security interest created or provided for by a security agreement or other transaction entered into by an entity before the commencement of this Act;
- (b) “prior law” means any law, whether statutory, equitable or common law that was in force before the commencement of this Act;

- (c) "transitional period" means the period of six months after the notification of establishment of the Registry is published by the Federal Government in terms of sub-section (1) of section 19.
- (2) Secured creditors may perfect prior security interests in accordance with this Act during the transitional period.
- (3) Upon perfection under sub-section (2), a prior security interest shall retain priority from the date it was perfected under prior law and shall have priority over a security interest created and perfected after the commencement of this Act.
- (4) If a prior security interest is perfected after the transitional period, such prior security interest shall be deemed to have priority from the date of actual perfection in the event of a conflict with a security interest created and perfected after the commencement of this Act or a prior security interest perfected during the transitional period.
- (5) Nothing in this Act shall prejudice a security interest created and perfected by a company before the commencement of this Act and such security interest shall Continue to be governed by prior law.

STATEMENT OF OBJECTS AND REASONS

Taking security, interests over movable property is considered risky under the current legal framework in as much as: (a) it does not adequately provide for the creation of security interests over movable property to secure the obligations owed by a customer to a financial institution; (b) it provides a restrictive and ambiguous definition of movable property; and (c) it does not provide for the registration of security interests over movable property, where the borrower is not a company. Consequently, access to credit is constrained for borrowers.

2. Accordingly, with a view to promote the conduct of banking business and to increase access to credit, in particular for small and medium enterprises, micro-businesses and agri-borrowers, it is proposed to enact the Financial Institutions (Secured Transactions) Bill, 2016 that provides for a legal regime for the creation, registration, priority and enforcement of security interests over movable property, and in particular:

- (a) clarifies and expands the meaning and scope of movable property;
 - (b) provides general principles in relation to creation and perfection of security interests over movable property;
 - (c) provides priority rules between competing security interests over movable property;
 - (d) establishes a secured transactions registry and an electronic register for the purposes of administering the Financial Institutions (Secured Transactions) Act, 2015 and matters related thereto;
 - (e) provides general principles in relation to an assignment of receivables;
 - (f) provides the modes of enforcement for security interests over movable property; and
 - (g) provides general principles in relation to the rights of secured creditors under the insolvency laws.
3. This Bill is designed to achieve the aforesaid purpose.

SENATOR MOHAMMAD ISHAQ DAR,
*Minister for Finance, Revenue,
Economic Affairs, Statistics
and Privatization.*

ABDUL JABBAR ALI,
Secretary.