

UNICAP MODARABA
Islamic Financial Institution-NBFI

Ref. No.: UCAPM/PSX/0308/2022

Mr. Hafiz Maqsood Munshi
Head – Listed Companies Compliance
Pakistan Stock Exchange Limited
Stock Exchange Building
Stock Exchange Road
Karachi.

Dear Sir,

Subject: Shifting of M/s. UNICAP Modaraba (UCAPM) from
Defaulters' Segment to Normal Counter

This refers to your letter No. PSX/GEN-1305 dated July 01, 2022 and PSX Notice No. PSX/N-622 of even date wherein it has been communicated that UNICAP Modaraba has been placed on Defaulter Segment under PSX Regulation 5.11.1.(I) upon information received from the SECP that an Order Under Section 23 has been passed for filing an application of Winding Up before the Modaraba Tribunal Lahore.

In terms of the concluding line of your letter no. No. PSX/GEN-1305 wherein we have been advised to keep the Exchange updated with the matter of Winding Up proceedings., we are pleased to inform that UNICAP Modaraba challenged the order passed by the Registrar Modaraba Dated 28.03.2022 in the Lahore High Court Lahore through Writ Petition No.47201/2022.

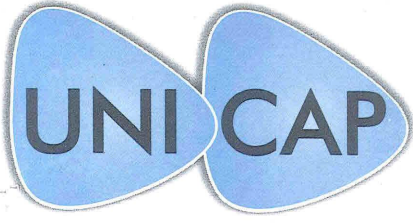
You are further informed that the honorable Lahore High Court has been pleased to accept our Writ Petition and has suspended the operations of the impugned Order of the Registrar dated March 28, 2022. Certified copy of the Order of the Honorable Lahore High Court is being attached herewith for your reference and record.

In the light of the decision of suspending the operations of the impugned declaration of Winding Up granted by the Honorable Lahore High Court it is requested that UNICAP Modaraba be shifted to Normal Counter from Defaulter Segment with immediate effect.

It is further requested that the instructions passed by your office under PSX Regulation 5.11.2 to CDC for freezing share certificates of Map Out Management Company (Pvt.) Ltd. be Withdrawn without any delay so that the shares frozen by CDC be made active back to the original position of July 01, 2020.

Please stay posted that after the suspension of operations of the order of the Registrar Modaraba dated 28.03.2022 by the Honorable Lahore High Court in Writ Petition No. 47201/2022 all subsequent regulatory actions taken in the wake of this Order under any PSX or CDC regulation carry no legal effect hence no longer can

6-M/2, Block – H, Gulberg – II, Lahore, Pakistan



UNICAP MODARABA
Islamic Financial Institution-NBFI

sustain or remain in field and therefore are liable to be withdrawn without any delay.

In view of the above it is requested to immediately withdraw PSX Notice No. PSX/N-622 as well as your instructions to CDC for freezing our shares oblige.

Best Regards,



Company Secretary

Cc:

1. *The Executive Director / HOD (PRDD) – SECP.*
2. *The Chief Regulatory Officer-PSX.*
3. *The Deputy Manager Compliance Department, CDC*

ENCLOSED:

1. *Certified Copy Of The Order Passed By The Honorable Lahore High Court*
2. *Copy Of Order Passed By The Registrar Dated March 28, 2022.*

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FORM No. HCJD/C-121

ORDER SHEET
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Case No. W.P.No.47201 of 2022

UNICAP MODARABA etc

Versus

Federal Government of Pakistan etc.

S. No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of Parties of Counsel, where necessary.
	03.08.2022	Mr. Adil Bandial Advocate, Mr. Asad Hussain Advocate and Barrister Syed Muhammad Ishaq, Advocate for the petitioners. Mr. Mohammad Osman Khan Assistant Advocate General Punjab on court call. Ms. Sadia Malik Assistant Attorney General for Pakistan on court call with Hafiz Tallah Advocate for respondent No.2 (SECP)

Learned counsel for the petitioner submits that conspicuously the appointment of respondent No.3 has been made without any regard to the existing legal provisions. Adds that instead of the Federal Government, respondent No.3 has been appointed by a Secretary of the Securities and Exchange Commission of Pakistan. Adds that initially the petitioner challenged this matter through writ petition No.6838 of 2021 and the petition was disposed of with a direction to the petitioner to approach the Registrar. Submits that the Registrar acting as a Judge in his own cause has, of course, rejected the contention of the petitioner.

2. Hafiz Talha Advocate for Securities & Exchange Commission of Pakistan is present alongwith Ms. Sadia Malik Assistant Attorney General and has been put on notice. He requests for a two weeks time period to file a suitable reply in this matter. While he may file a reply on behalf of respondent No.2 (SECP), since the petition is in the nature of quo-warranto, respondent No.3 shall also file a reply in his individual capacity.


3. Let this matter be set down for hearing immediately after summer vacations.

C.M.No.01/2022

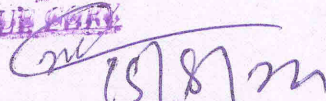
4. Dispensation sought for is allowed subject to all just and legal exceptions.

C.M.No.02/2022

5. Notice. In the meanwhile the operation of impugned order dated 28.03.2022 shall remain suspended.


(MUHAMMAD SHAN GUL)
JUDGE

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Qanun-e-Shanadai Order 1991


(HEAD EXAMINER)
Copy Supply Section (Copy Branch)
Lahore High Court, Lahore.

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IN THE HONOURABLE LAHORE HIGH COURT, LAHORE

47201
Writ Petition No. _____ of 2022

1. **UNICAP MODARABA**

having registered address at 6-M/2
Block H, Gulberg II, Lahore

Through the 'Mapout Management Petitioner Company (Private) Limited'
the Modaraba Petitioner Company
having registered address at 6-M/2
Block H, Gulberg II, Lahore
Through Mr. Khurram Shehzad
Executive Vice President

2. **Mapout Management Company (Private) Limited**

A Modaraba Petitioner Company
having registered address at 6-M/2
Block H, Gulberg II, Lahore
Through Mr. Khurram Shehzad
Executive Vice President

3. **Mr. Syed Ammar Hassan**

Shareholder and principal sponsor of 'Mapout Management Company (Private) Limited'
6-M/2 Block H, Gulberg II, Lahore

Versus

Petitioners

1. **Federal Government of Pakistan**

Through Principal Secretary, Cabinet Division
Pakistan Secretariate, Islamabad

2. **Securities and Exchange Commission of Pakistan**

through *Chairman*
NIC Building, 63- Jinnah Avenue
Blue Area, Islamabad
having regional office at
3rd and 4th floor
Associated House
7-Egerton Road Lahore

3. **Registrar Modaraba**

Specialized Companies Division
Policy, Regulation and Development Department (Modaraba Wing)
Securities and Exchange Commission of Pakistan
NIC Building, 63- Jinnah Avenue
Blue Area, Islamabad

Respondents

PSX's and CDC's consequent actions, which have already and continue to severely prejudice and causes harm to the Petitioners.

- C. That it is settled law that where the law requires a thing to be done in a particular manner, such prescription cannot be violated by executive authority. In light of the above, it is submitted that the Impugned Actions violate express stipulations, prescriptions and settled principles of law.
- D. That the Honourable Sindh High Court has already issued interim injunction with respect to matters raised *vide* the titled Writ Petition.

[Copies of the Order passed by the Honourable Sindh High Court dated 05 August, 2020 in Constitutional Petition No. D-3523 of 2020 titled 'B.R.R Guardian Modaraba and others versus Federation of Pakistan' and ancillary documents are appended as 'Annex K' and Annex K/I, respectively]

- E. That the Impugned Order violates Section 24 of the General Causes Act, 1897.
- F. That the Impugned Order violates Article 10A of the Constitution.
- G. That the Impugned Order violates the Petitioners' Fundamental Rights as guaranteed in the Constitution, and the Petitioner

PRAYER

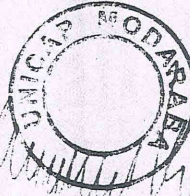
In light of the above, it is most respectfully prayed that this Honourable Court be pleased to declare that Respondent No. 1 is exclusively empowered to appoint Respondent No. 3 to the office of Registrar, Modaraba under and in terms of Section 3 of the Modaraba Ordinance; and

Declare that Respondent No. 3's appointment by Respondent No. 2 in terms of the Impugned Appointment Notification dated 09 November 2021 as illegal and *coram non judice*; and

Set aside the Impugned Order dated 28 March 2022 and all actions taken by the office of Respondent No. 3 culminating in the Impugned Order and those subsequent thereto, as illegal; and

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It is also prayed that to alleviate the hardships of the Petitioners any other relief, which this Honourable Court may deem fit and appropriate in the facts and circumstances of the case, may also graciously be granted.



Petitioners

through

Adil Bandial
Adil Bandial
Advocate of the High Courts

Sajjad Ali
Sajjad Ali
Advocate of the High Courts

Asad Hussain
Asad Hussain
Advocate of the High Courts

Barrister Syed Muhammad Ishaq
Barrister Syed Muhammad Ishaq
Advocate of the High Courts
35, Luqman Street, Zahoor Afridi Road
Lahore Cantonment, Lahore

Certificate:

It is certified that the instant Writ Petition is maintainable and it involves determination of question of law and seeks to safeguard fundamental rights of the Petitioners and there is no other efficacious and alternate remedy available to the Petitioners. As per instructions given by the 1st Petitioner on the subject matter.

Certificate:

Certified upon instructions that this Petition has arisen from violation/non-fulfilment of obligations under the following enactments: Modaraba (Floatation and Control) Ordinance, 1980, the Securities and Exchange Commission Act, 1997, the Companies Ordinance, 1984, the Companies Act, 2017, and Constitution of Pakistan and that no lawful alternative and efficacious remedy is available.

[Signature]
Counsel

List of Books:

1. The Constitution of the Islamic Republic of Pakistan, 1973
2. The Companies Ordinance, 1984
3. The Companies Act, 2017
4. the Modaraba (Floatation and Control) Ordinance, 1980
5. the Modaraba Companies and Modaraba Rules, 1981
6. The Securities and Exchange Commission Act, 1997



ATTESTED
Copy Submitted to
Lahore High Court, Lahore



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT
(MODARABA WING)

Before Tariq Naseem, Registrar Modaraba

In the matter of

Unicap Modaraba, managed by Map Out Modaraba Company (Pvt.) Limited

Number and Date of Notice:

SC/M/MS/Unicap/46/2021/103 dated October 5, 2021

Date of Hearings:

October 20, 2021 (The Modaraba vide email dated October 18, 2021 requested extension in time to submit written reply to the Notice and also requested to adjourn the hearing to November 1, 2021)

November 2, 2021 (The Modaraba vide email dated November 1, 2021 requested to adjourned the hearing for two or three days.)

November 5, 2021 (The Modaraba approached the Hon'ble Lahore High Court, Lahore for time to submit supplementary reply)

December 17, 2021 (In compliance of the Hon'ble Lahore High Court, Lahore Order, the hearing fixed for December 17, 2021 was adjourned to December 21, 2021 on Modaraba's request.)

December 21, 2021 (Hearing adjourned as Modaraba's representative appeared but without any valid power of attorney)

December 29, 2021 (The Modaraba again vide email dated December 27, 2021 requested to adjourn the hearing due to conducting the half yearly account of the Modaraba till December 31, 2021.)

January 4, 2022 Hearing held in the matter.

Present for Respondent:

1. Mr. Mumtaz H. Chaudhry, Senior Consultant
2. Mirza Abdul Maalik Baig, Advocate High Court

Date of Order

March 28, 2022

ORDER

Under Section 23 of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance,
1980



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**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT
(MODARABA WING)**

Continuation Sheet - 2 -

Particulars	A	B	A/B	C	D	C/D
	Acc. Loss Without Considering Statutory Reserves	Paid Up Capital After Discount	%	Acc. Loss Considering Statutory Reserves	Paid Up Capital After Discount	%
	Rs. In million			Rs. In million		
June 30, 2020	165.00	186.4	88.52%	156.26	186.4	83.83%
June 30, 2019	161.73	186.4	86.77%	152.99	186.4	82.08%
June 30, 2018	161.43	186.4	86.60%	152.69	186.4	81.91%
June 30, 2017	156.38	186.4	83.89%	147.64	186.4	79.20%
June 30, 2016	152.20	186.4	81.65%	143.46	186.4	76.96%

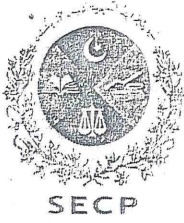
4. Furthermore, the auditors of the Modaraba (M/s. Ilyas Saeed & Company, Chartered Accountants), had added emphasis in their audit reports to the certificate holders for the years 2018 to 2020 on the Modaraba's ability to continue as a going concern and stated that:

"the Modaraba has suffered accumulated losses amounting to Rs.165.008 million (2019: Rs.161.737 million and 2018: Rs.161.431 million) and have negative operating cash flows of Rs.2.961 million (2019: Rs.2.967 million and 2018: Rs.6.930 million). Furthermore, the Modaraba has not carried out business activities to its' full potential during the years 2018 to 2020."

5. Consequently, the Notice dated October 5, 2021 under Section 23 of the Modaraba Ordinance was served on the Modaraba through its CEO, Directors, Company Secretary and CFO as to why proceedings for winding up of the Modaraba may not be initiated in terms of section 23(1)(ii)(b) of the Modaraba Ordinance. The CEO, Directors, Company Secretary and CFO of the Modaraba Company were required to submit written response(s) to the Notice within fourteen days. They were also required to appear before the Registrar Modaraba on October 20, 2021 for a personal hearing in the matter.

6. The Modaraba vide email dated October 18, 2021 requested extension in time to submit written reply to the Notice and also requested to adjourn the hearing fixed for October 20, 2021 to November 1, 2021. The request of the Modaraba was considered and allowed the Modaraba to submit written reply by November 1, 2021 and appear for hearing on November 2, 2021. The Modaraba vide email dated



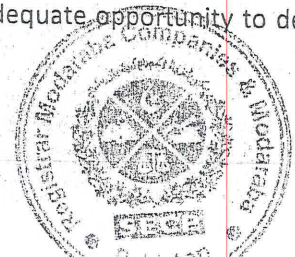


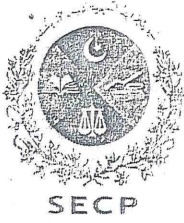
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT
(MODARABA WING)

Continuation Sheet - 4 -

10. The written responses of the Modaraba vide letters dated November 1, 2021, November 24, 2021 and the arguments made by its representatives during the hearing are summarized as under:

- I. the Notice is pre-mature and mis-calibrated, as it squarely hinges upon a self-assuming determination by the office of the Registrar Modaraba. Before issuance of the Notice, an opportunity of hearing to Modaraba Company have been afforded to put forth its stance so as to counter the assumptions embraced. However, it has affirmatively been declared that the Modaraba has sustained losses.
- II. the office of the Registrar Modaraba, in terms of its Notice dated September 23, 2021, declared that the Auditors of the Modaraba were not approved, and hence did not constitute as valid auditors thereof. The Registrar Modaraba has derived solace from the reports of the same Auditors, whilst dispensing with the underlying Notice. In terms of settled law, it is submitted that the executive is not permitted to conveniently elect what fact supports its stance, notwithstanding that it has earlier denied the same. This cherry-picking is unconstitutional, unconscionable, unlawful, illegal, and unreasonable, and amounts to harassment wheeled towards the Modaraba and the Modaraba Company.
- III. the Notice pejoratively derides the inalienable and fundamental rights of the Modaraba, particularly those entrenched in terms of Articles 4, 8, 10-A, 18, 23, 24 & 25 of the Constitution of the Islamic Republic of Pakistan, 1973, in that the Modaraba has outrageously been deprived of due process, and has not been treated in accordance with law. The Notice also blatantly scorns the proprietary rights and interests of the Modaraba, in view of the fact that it is and was, at all material times, demonstrably marred with illegality and hinders the constitutional right of the Modaraba to adopt conduct of trade and business – which, in a circuitous manner, ceaselessly affected the regulation of the Modaraba to its utter detriment. Most notably, the Notice squarely denudes the Modaraba from both a reasonable opportunity of hearing and a reasonable opportunity to defend. Needless to state, for observing due process of law, as an irreducible minimum of fairness, a reasonable opportunity to defend must be afforded to the person whose rights ought to be affected [kindly see *Muhammad Nadeem Arif & Others v. Inspector General of Police, Punjab & Others* (2011 SCMR 408); *Euro Duty Free Shop (Pvt.) Limited v. Federation of Pakistan* (2015 PTD 790)]. It may kindly be noted that, much interestingly, the office of the Registrar Modaraba unilaterally and arbitrarily – *of own whim and caprice* – declared that the accumulated losses of the Modaraba are above fifty percent [50%] of the total amount subscribed by the holders of Modaraba Certificates, with the threatened initiation of winding-up proceedings, thereby exposing, and subjecting, not only the Modaraba to irreparable loss and unquantifiable legal injury in terms of the reputational hazards, but also adversely affecting its commercial operations and concerns. It may kindly be noted that no prescient notice or warning of any such adverse declaration or affirmation was ever served upon the Modaraba, and the Modaraba is and was, at all material times, willfully and maliciously being kept in darkness. Put simply, the Notice has disenfranchised the Modaraba from an adequate opportunity to defend



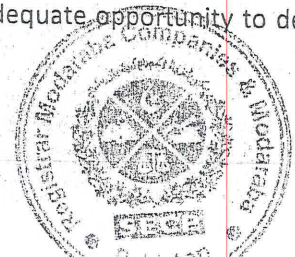


SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT
(MODARABA WING)

Continuation Sheet - 4 -

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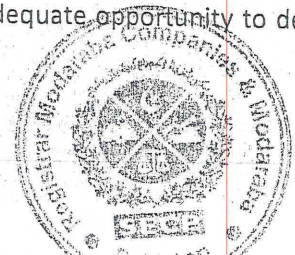


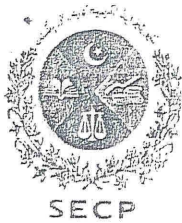
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT
(MODARABA WING)

Continuation Sheet - 4 -

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SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT
(MODARABA WING)

Continuation Sheet - 10 -

However, after the advent of the Securities and Exchange Commission of Pakistan Act, 1997 (the "Act"), the aforesaid section was omitted by virtue of sub-section (a) of section 43 (reproduced below).

"43. Dissolution of the Authority.- The Authority is hereby dissolved and at all times thereafter

(a) section 11 and sub-section (3) to (7) (inclusive) of section 12 of the Ordinance shall stand repealed and except as hereinafter provided, all references to the Authority appearing in the Ordinance and any other law for the time being in force shall be deemed to mean and refer to the Commission;

Whereas, by virtue of sub-section (c) of section 43, after dissolution of the Authority all the powers delegated to it were to be exercised by the Securities and Exchange Commission of Pakistan (the "Commission"),

"(c) save as otherwise provided in clause (b), all powers exercisable by the Federal Government under any provisions of the Ordinance or any other law for the time being in force, which immediately before the appointed day had been delegated to the Authority, shall be exercised by the Commission;"

Furthermore, clause "o" of sub-section 4 of section 20 of the Act provides that, -

"(4) The Commission shall be responsible for the performance of the following functions:

(o) performing such functions and exercising such powers of Federal Government delegated to the Commission, (other than the power to make any rules or regulations) under the provisions of the Ordinance, the Securities and Exchange Ordinance, 1969 (XVII of 1969), the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980) and under any other law for the time being in force or any other law which may be made after commencement of this Act, under which any function or power has been conferred on the Commission"

- IX. with regard the argument that the already accumulated losses of the Modaraba could have been done-away with, particularly in wake of the fact that the injection of private equity was obstructed due to appointment of Administrator. I have reviewed the information available on record and observed that the management and control of the Modaraba was transferred to the Modaraba Company by the Registrar Modaraba on November 27, 2014, subject to compliance with the major condition that the Modaraba Company shall arrange equity investment of Rs.200 million and Musharakah financing of Rs.250 million within two years. But the Modaraba Company failed to comply with the aforesaid major condition as a result of which the Registrar Modaraba, vide order dated April 19, 2016 removed the Modaraba Company from the management of the Modaraba and appointed an administrator to manage its affairs in place of the Modaraba Company. The Modaraba Company challenged the order in a writ petition (14237/2016) before



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SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT
(MODARABA WING)


Continuation Sheet - 12 -

13. I have analyzed the facts of the case, relevant provisions of the law and representations made by the respondent Modaraba in its response to the Notice. The accumulated losses of the Modaraba have wiped out the above 50% paid up fund of the Modaraba and there is no evidence of any success of plan submitted by the Modaraba Company for revival of the Modaraba. Considering the financial performance of the Modaraba, unsuccessful efforts made by the Modaraba Company for revival of the Modaraba, the overall economic conditions in the country and the withdrawn tax exemptions for the Modarabas, there is nothing tangible available that indicate possibility of revival of the Modaraba and resultantly any return accruing to the modaraba certificate holders. I am, therefore, of the considered view that in order to safeguard the interest of the certificate holders and to stop further accumulation of losses, it is just and equitable to initiate winding up proceedings of the Modaraba through Modaraba Tribunal, in the public interest.

14. Based on the above facts, I, therefore, in exercise of powers conferred under section 23 (i)(ii)(b) of the Modaraba Ordinance hereby declare that as the accumulated losses of the Modaraba have exceeded more than fifty percent of the total amount subscribed by the modaraba certificate holders, it may be wound up in the public interest by filing an application for winding up before the Modaraba Tribunal Lahore.

15. Nothing in this Order may be deemed to prejudice operation of any other provision of the Modaraba Ordinance, providing for the prosecution or imposition of penalties on the CEO or Directors or the Modaraba Company in respect of any default, omission, contravention of the Modaraba Ordinance and Modaraba Rules committed by them.

Issued under my hand and seal this 28th day of March 2022.


Tariq Naseem
Registrar Modaraba

