Journal of South Asian and Middle Eastern Studies Vol. XIX, No. 4, Summer 1996

Financial Innovation in an Islamic Setting: The Case of Pakistan

Robert E. Looney

Introduction

The financial system in Pakistan is undergoing dramatic changes. First, the introduction of Islamic modes of financing led to the creation of new financial institutions – leasing companies and modarabas (essentially closed end mutual funds) and instruments such as the musharika and morabaha.

With a radical program of financial sector reform initiated in the early 1990s, the government has started a process of liberalization, deregulation and privatization. The swiftness of these changes has caught the participants in the financial markets by surprise. The definitions and roles of the past have suddenly become redundant. Many observers feel an exciting future is opening up. This future will be dominated by those who are creative, pioneering and iconoclastic.[1]

This paper focuses on the development of and problems facing two key areas of non-bank financing: Modarabas and leasing companies.

Background[2]

The origin of the Non-Bank Financial intermediaries in Pakistan has its origins in the perception of policy makers in the 1950s, 1960s and 1970s that the market was incapable of providing term financing for industrial projects. The private commercial banks,

Robert Looney is a professor at the Naval Post-graduate School of the Department of the Navy in Monterey, CA.

1 Inam-ul Haq "The Role of Non-Bank Financial Institutions" Anjum Nashim ed., *Financing Pakistan's Development in the 1990s*, (Karachi: Oxford University Press, 1992), p. 419.

2 *Ibid.*, at pp. 419-421.

which had been established by families of industrialists, concentrated their activities around short-term trade and working capital financing. Long-term lending, equity investments and key areas of the economy such as agriculture and housing, were largely neglected. Furthermore it was felt that the interlocking of finance and industrial capital would lead to the preemption of credit by established business groups, depriving emerging entrepreneurs of sources of finance. The solution was found in the form of government owned (or sponsored) financial institutions with specific charters to cater to certain market segments.

A number of institutions were set up to serve these perceived gaps in the country's financial system. Thus in the 1960s,the Industrial Development Bank of Pakistan was formed to provide loans to small and medium sized industrial projects. The Pakistan Industrial Credit and Investment Corporation (PICIC) catered to medium and large sized projects. The National Investment Trust (NIT) and Investment Corporation of Pakistan (ICP) were established to mobilize small savings for investment in the equities market through investment units and mutual funds. The Agricultural Development Bank of Pakistan (ADBP) channeled credit to the agricultural sector.

In the 1970s, this list of specialized institutions was further expanded. The National Development Finance Corporation (NDFC) was set up as a statutory corporation to meet the funding needs of the public sector, which had greatly increased after its nationalization of the early 1970s. The federal Bank for Cooperatives (FBC) was created to promote the cooperatives movement, House Building Finance Corporation (HBFC) for housing finance, and the Bankers Equity Limited (BEL) to provide financing, particularly through equity investments, to medium and large sized private sector projects.

The performance of the Development Finance Institutions (DFIs) in meeting the objectives set for them was mixed. There were successes, as well as failures. Notable amongst the successes were:

- An increase in private and public sector capital formation;
- An expansion of credit for agricultural and rural development; and
- The promotion of new industries and entrepreneurs.

In some respects, however, the DFIs failed to play the role expected of them. These included:

- An inability to reduce dependence on the State Bank of Pakistan's (SBP's) lines of credit for agriculture, industry and housing through the mobilization of public savings.
- A failure to effect a fundamental transformation in the pattern and direction of industrial financing. While new industries were promoted to a certain extent, the bulk of DFI loan portfolios is concentrated in the traditional areas of textiles, sugar and cement.
- A poor loan recovery performance.
- A high level of operating costs.
- A lack of dynamism and creativity in both mobilizing and deploying loans.

Therefore, in a sense, the DFIs acted as passive conducts through which state credits were channeled into economic activities that were being ignored by the private sector. They were a necessary tool of state intervention. However, it was a role that could have been performed very differently had the state provided a more supportive external environment.

The failures of the DFIs can be attributed to the following impediments:[3]

- Political interference in credit and personnel policy;
- A lack of managerial autonomy, particularly in the areas of personnel recruitment, retrenchment and emoluments;
- The absence of an effective and speedy system of legal recourse against defaulting borrowers; and
- An unstable and inconsistent fiscal and industrial policy framework.

The Role of NBFIs in the 1990s

The NBFI sector is undergoing a major process of change, growth and diversification. Along with the traditional DFIs, new types of institutions and instruments are emerging. The sector cannot be divided into the following distinct sub-sectors:

3 *Ibid.*, at 421.

- Modaraba funds
- Leasing companies
- Development finance institutions/Investment banks
- Stock Market funds

The emergence of these new institutions may be attributed to the following government initiatives:

- Reform of the financial system towards Islamic principles of risk sharing
- The privatization and deregulation of the financial system
- The introduction of a market-based system of debt management and monetary control;
- The removal of restrictions on foreign exchange flows; and
- The encouragement of foreign portfolio investments in Pakistani companies.

Islamic Financial Institutions – Overview

Non-Islamic financial systems are based on the principle that capital is a factor of production and interest is a reward. In contrast, an Islamic financial system, views investment as a factor of production.[4] Here, it is important to note that what is forbidden by Islamic law is the fixed or predetermined return on financial transactions, and not an uncertain rate of return represented by profits. For this reason, the modern concept of Islamic finance has developed on the basis of profit sharing. In the last few decades a variety of models of Islamic finance have been adopted. The general operations of these financial institutions revolve around their attractions of funds and the manner in which these funds are converted into profitable assets.

Sources of Funds[5]

Besides its own capital and equity, the main sources of funds for an Islamic financial institution involve transaction deposits and investment deposits. Transactions deposits are directly related to payments and can be regarded as equivalent to demand deposits in a conventional banking system. Although a bank would guarantee the nominal value of the deposit, it would pay no return on this type of liability. Investment deposits constitute the principal source of funds for most Islamic institutions, and they resemble more closely shares in a firm rather than time and saving deposits of the customary sort. The bank offering investment deposits would provide no guarantee on their nominal value. Nor would it pay a fixed rate of return. Instead, depositors would be treated as if they were shareholders and therefore, entitled to a share of the profit or losses made by the bank. The only contractional agreement between the depositor and the bank is the proportion which profits and losses are to be distributed. The share or distribution parameter has to be agreed on in advance of the transaction between the bank and the depositor and cannot be altered during the life of the contract, except by mutual consent.

Asset Acquisition

Islamic financial institutions can acquire profit share assets via two principle modes of transactions: Mudarabah and Musharakah. Under the provisions of the first mode, surplus funds are made available to the entrepreneurs to be invested in productive enterprise in return for a predetermined share of the profits earned. Financial losses are borne exclusively by the lender. The borrower, as such, loses only the time and effort invested in the venture. The arrangement, therefore, effectively places human capital on par with financial capital.

In Musharakah, on the other hand, there is more than a single contributor of funds. All parties invest in varying proportions, and the profits (or losses) are shared strictly in relation to their respective capital contribution. This financing method corresponds to an equity market in which shares can be acquired by the public, banks, and even the central bank and the government. Traditionally, Mudarabah has been employed in investment projects with short gestation periods and in trade and commerce; whereas, Musharakah is used in long-term investment projects. These two modes have their historical counterparts in farming and in orchard keeping, where the harvest is shared between and among the

---

4 Khalid Niaz Khawaja, "Islamic Concept of Banking," *Economic Review*, Vol. 25; No. 3 (March, 1994). p. 31.

5 The following is largely based on Moshin S. Khan and Abbas Mirakhor, [illegible]

In transactions where profit sharing is not applicable, other modes of financing can be employed, which include the following:[6]

- *Qard al-Hasanah (beneficence loans)* – These are zero-return loans that the Quern exhorts Muslims to make available to those who need them. Financial organizations that provide these loans are permitted to charge the borrower a service charge to cover administrative costs of handling the loan so long as the charge is not related to the amount or the period of the loan, and represents solely the cost of administering the loan.
- *Bai' Mua'jjal (deferred payment sales)* – This mode allows the sale of a product on the basis of deferred payment in installments or in a lump-sum payment. The price of the product is agreed on between the buyer and the seller at the time of the sale and cannot include any charges for deferring payments.
- *Mai' Salam or Bai'Salaf (purchase with deferred delivery)* – In this transaction the buyer pays the seller the full negotiated price of a product that the seller promises to deliver at a future date. This transaction is limited to products whose quality and quantity can be fully specified at the time the contract is made, that is agricultural and manufactured products.
- *Ijara (leasing)* – In this transaction, a person leases a particular product for a specific sum and a specific period of time. He can also negotiate for lease-purchase of the product, where each payment includes a portion that goes toward the final purchase and transfer of ownership of the product.
- *Jo'alah (service charge)* – This is a transaction in which one party undertakes to pay another a specified sum of money as a fee for rendering a specific service in accordance with the terms of the contract negotiated between the two parties. This mode facilitates consultation, fund placements and trust activities.

This list is not exhaustive. Under Islamic law the freedom of contracts provides the parties with a flexibility that makes possible a virtually open-ended variety of forms of financial transactions and instruments. There is nothing to constrain the system from creating any contractual form so long as the contract does not include interest and both parties are fully informed of the details of the contract.

Pakistani Islamic scholars have regarded several distinctive types of finance as acceptable:

- Modaraba
- Shirakah or
- Murabaha
- Leasing
- Bai Muajjal and
- Bai Salem[7]

In addition, several other modes of financing have been approved by the Islamic Ideology Council:

- Hire Purchase and
- Investment Auctioning[8]

Of these, the development of Modarabas has been somewhat unique in Pakistan.

Modarabas

Modarabas are unique to Pakistan. They were created by the Modaraba Ordinance of 1980 whose intent it was to provide a legal framework for formation and regulation of Modaraba as a recognized legal entity as well as providing a framework for Modaraba management through a Modaraba management company.[9]

A Modaraba is an Islamic form of limited partnership in which a managing firm agrees to invest the funds of a fairly large number of passive investors.[10] Shares of the management company as well as

7 Khalid Niaz Khawaja, "Islamic Concept of Banking," *Economic Review*, Vol. 25; No. 3 (March, 1994). p. 32.

8 *Ibid.*

9 Shabbir H. Kazmi, "Modaraba: A Viable Alternative," *Pakistan & Gulf Economist*, (March 26-April 1, 1994), pp. 16-17.

those of their Modaraba funds subscribed by the private investors are traded on the stock exchange. As long as the Modarabas' activities are sanctioned by a religious board, it can engage in almost any line of business.

The first Modaraba was formed in 1981. The first multipurpose Modarabas, BRR Modaraba and First Habib Modaraba were floated in 1985. In 1987, First Grindlays Modaraba and Modaraba Al-Mali were floated. The success of these Modarabas attracted others and by 1990, 14 Modarabas had been floated.

This growth was partially due to the relatively good profits earned by the Modarabas. The fact that the Modarabas were also managed within the injunctions of Islam made them attractive investments. Perhaps more important, section 37 of the Modarabas Ordinance provided for tax exemption if not less than ninety percent of its profits were distributed to the holders of Modaraba Certificates. These factors led to a rapid expansion of Modarabas with 19 new ones floated in 1991 alone. Today there are 52 of these institutions operating in Pakistan (Table 1).

Another factor responsible for the expansion of Modarabas has been the incentives given to banks to get into this type of business. The flotation of Modarabas allows banks to:[11] (a) acquire funds at relatively low cost; (b) save income tax; (c) improve their liquidity position of banks; and (d) leverage on maximum exposure to one organization. Specifically, through their Modarabas, banks can partially extend funds from their banking operations and partly through leasing plant and machinery. This enables the banks to extend larger amounts to good clients without running up against the credit limit per party.

Modarabas account for more than 36 percent of the paid-up capital of all listed financial institutions in the country (including banks). Nearly 37 percent of the 135 listed financial institutions are Modarabas. The overwhelming importance of Modaraba and their significant contribution to the national economy in the areas of leasing, stock market investments, short and long-term financing, trading and, in some cases, even manufacturing, cannot be overestimated.

Lines of Activity

Most of the Modarabas listed on the Karachi Stock Exchange are perpetual, multipurpose and multidimensional. Their main lines of activity include:[12]

Table 1
Modarabas in Pakistan

Company	Year of Listing	Face Value	September 1994 Rates	Paid-up Capital (Rs. mln)
Al-Leasing Modaraba	1992	10	9.75	50.000
Al-Noor Modaraba	1992	10	11.50	210.000
Al-Leasing	1992	10	8.25	110.000
Allied Bank Modaraba	1993	13	12.00	300.000
B.F. Modaraba	1989	10	6.60	45.696
B.R.R. Capital Modaraba	1985	10	21.00	202.818
B.R.R. Llnd Modaraba	1990	10	12.00	150.000
Confidence Modaraba	1991	10	21.00	55.000
Constellation Modaraba	1991	10	6.60	64.625
Crescent Modaraba	1991	10	20.75	129.000
Custodian Modaraba	1994	10	8.50	30.000
D.G. Modaraba	1992	10	9.00	50.000
Elite Capital Modaraba	1992	10	7.75	113.400
Equity Int. Modaraba	1993	10	8.75	150.000
Equity Modaraba	1992	10	11.25	262.000
Financial Link Modaraba	1994	10	8.75	100.000
General Leasing Modaraba	1993	10	8.75	56.250
Grindlays Modaraba	1987	10	31.50	346.500
Guardian Leasing Modaraba	1994	10	10.00	100.000
Habib Bank Modaraba	1991	10	9.75	397.072
Habib Modaraba	1985	5	7.75	126.000
Do (R) AL	–	5	7.75	126.000
Hajvery Modaraba	1991	10	7.50	205.220
Ibrahim Mododaraba	1993	10	11.25	116.000
Imrooz Modaraba	1994	10	13.00	30.000
Industrial Capital	1991	10	10.00	86.250
Interfund Modaraba	1991	10	16.50	67.847

Table 1 (cont.)
Modarabas in Pakistan

Company	Year of Listing	Face Value	September 1994 Rates	Paid-up Capital (Rs. mln)
D)-(R)	–	10	5.25	12.336
L.T.V. Capital Modaraba	1989	5	16.25	300.000
Meharan Modaraba	1990	10	12.50	83.160
Modaraba Al Mali	1987	10	14.25	142.884
Do (R) Al	1993	10	14.00	39.690
Modaraba Al Tijarah	1991	10	17.75	66.000
National Modaraba	1989	5	4.50	52.998
Nishat Modaraba	1992	10	17.00	139.800
Pak Modaraba	1991	0	6.10	110.000
Premier Modaraba	1991	10	5.00	27.500
Professionals Modaraba	1991	10	11.30	77.674
Providenc Modaraba	1991	10	6.50	63.130
Prudential Mod. 1st	1990	10	5.00	293.311
Prudential Mod. 2nd	1990	10	5.25	193.050
Prudential Mod. 3rd	1991	10	6.25	222.600
Punjab Modaraba	1993	10	17.50	270.000
Sanaullah Modaraba	1990	10	15.50	116.875
Schon Modaraba	1992	10	7.50	234.000
Tawakkal Modaraba	1990	10	6.75	258.750
Tri Star Modaraba	1990	10	11.00	96.800
Tri Star Modaraba 2nd	1993	10	13.00	110.000
Trust Modaraba	1992	10	26.50	273.000
UDL Modaraba	1991	10	21.25	188.922
Unicap Modaraba	1991	10	22.000	136.400
Unity Modaraba	1993	10	5.80	300.000

Source: *Pakistan & Gulf Economist*, (September 24-30,1994), p. 8.

Finance. These provide working capital finance on profit and loss sharing basis using Musharkia (joint venture partnership) and by supplying materials, products and capital goods on cash and deferred mode of payment.

Advisory & Investment Management Services. The Modarabas often give professional analysis of non-interest bearing securities to institutional and individual investors. In addition they can:

- Provide expert financial and investment advice pertaining to Islamic modes of investment.
- Manage investment portfolios in Halal (as approved by the Religious Board) shares and stocks, non-interest bearing securities and bonds, morabahas, musharikas, public flotation and private placement of approved equity securities.
- Act as advisers to companies in corporate or financial restructuring as well as in the preparation of resource mobilization plans.

Underwriting. Underwriting of shares of joint stock companies.

Venture Capital. These activities include:

- Providing seed capital to private companies with exceptional potential for growth and capital restructuring with the ultimate aim of floating shares and securities of the company to the general public.
- Co-sponsoring the companies being floated.
- Providing funds through Musharika and Morabaha arrangements.
- Acting as financial intermediary, raising venture capital and equity capital for existing and new companies.
- Rehabilitating potentially viable, but sick or near sick companies.

Leasing. Subject to the approval of Registrar of Modaraba, they engage in the business of leasing for which the funds are generated through certificate flotation or Musharika arrangement and other lawful resources.

Investment. They invest in equity and non-interest bearing securities listed and traded at the various stock exchanges.

Resource Mobilization. They mobilize substantial resources through Musharika, Morabaha, Modaraba and other permissible Islamic modes.

In recent years Modarabas have obtained around 70 percent of their revenues from leases, 16 percent from trading and other sources, 9 percent from Morabaha and Musharika, with income from equity investments comprising the rest. On the asset side, around 51 percent has consisted of assets leased out; Morabaha and Musharika Finance accounting for 18 percent investment in equity securities; 8 percent, with cash and other assets comprising the remainder.[13]

Leasing

Leasing is a rapidly growing business in Pakistan, and the future for companies in this line of business looks very bright. Leasing is basically a term loan or industrial credit that is structured according to the cash flow and taxation position of the borrower. Leasing offers a range of options to an investor or equipment user. Leasing has been recognized as one of the acceptable modes of financing under the non-interest based/Islamic system of financing. Leasing permits the use of capital equipment without initially owing it.

Leasing has spread gradually to a number of developing countries, following initiatives by international Finance Corporation (IFC), the private sector arm of the World Bank, and several major banking and leasing groups. IFC has been instrumental in establishing leasing companies in several developing countries such as Jordan, Peru, Sri Lanka and Thailand. IFC participated in the formation of the National Development Leasing Corporation (NDLC) in Pakistan. We also find participation in equity and transfer of knowledge in Orix Leasing Pakistan Ltd. and Atlas-Bot Leasing Ltd. Asian Development Bank has provided a credit line of US $ 5 million to Pakistan Industrial and Commercial Leasing Ltd. for leasing operations. Several international banks and Independent leasing companies have also played a leading role in establishing leasing companies in developing countries.[14]

In recent years leasing has become the most popular form of financing the capital assets in Pakistan.[15] Leasing and Modaraba companies are considered to be one of the most secure forms of investment. In large part this stems from the fact that they have the capacity to absorb any amount of selling and fractional price variations. As noted above, these companies have come into existence with the introduction of Islamic banking system in the country.

13 *Ibid.*

14 Javeet M. Pannni, "Leasing in Pakistan; past, present and future; Industry Overview," *Economic Review*, Vol. 24; No. 3 (March, 1993), p. 27.

15 Rafique Jabir, "Leasing Companies' Role in Pakistan's Economic Growth," *Economic Review*, Vol. 21; No. 3 (March, 1990), p. 15.

Advantages

One of the major attractions of leasing is the tax write-offs. This explains its popularity in high-tax countries. But this is certainly not the only benefit that accrues from the instrument. With the growth of the projects in size and sophistication, and with the modernization of economic activities in Pakistan, it is felt that leasing rather than traditional processes can easily meet the needs for plants, equipment and machinery.[16]

In a lease financing operation the end user or borrower, called "the Lessee," does not purchase the required equipment at the outset but has the right of using it for a certain period for which payments of rentals are made to "the Lessor," who remains the owner of the said equipment for the lease period. At the end of the lease period an option is provided to the lessee to purchase the equipment at its financial residual value.

In the industrialized countries, a significant volume of capital assets have been leased, thereby releasing funds that would have remained tied in the ownership of these capital assets for growth, as well as, for working capital needs. Certain advantages of leasing arrangements to the end user "the Lessee" are given as under:[17]

- Leasing provides funds for 100 percent of the equipment, including associated costs such as import duties, and surcharges, etc.
- It improves the return on equity through increased use of leverage.
- It increases turnover/sales without committing the resources of an enterprise.
- Leasing rentals represent a periodical expense, which may be set according to the case flow generation by the leased equipment over the period of a leasing arrangement.
- Leasing preserves borrowing capacity for other equipment or activities and has a positive effect on the cash-flow, as the principle of leasing is "Pay-as-you-earn."
- Generally, leasing contracts provide for similar term financing as normal bank loans while the cash cost is lower.

16 *Ibid.*

17 Based on: "Asian Leasing Corporation Limited: Company Profile" *Economic Review*, Vol. 25; No. 3 (March, 1994), p. 25.

- A major advantage for cash flow and capital budgeting purposes is that lessee rentals may be fixed at the inception of the contract and therefore do not change during the lease period.
- Leasing arrangements may be flexible. Rental payments are generally modulated according to the revenue expectations of the lessee.
- Through leasing their assets, companies (as Lessees) are permitted to charge monthly lease rentals as an allowable expense for the purposes of computing taxable profit. For profitable companies, paying corporate tax at rates of 40 percent to 55 percent the benefit through tax relief may be considerable.
- Companies may be eligible for tax credit in respect of plant and machinery installed under a lease arrangement approved by the Central Board of Revenue for BMR or extension programs. The amount of tax credit shall be computed on the basis of the amount expended by the lessor for the purchase of such plant and machinery.

Table 2 lists the country's major leasing companies.[18]

Table 2
Pakistan: Major Leasing Firms and their Investments
(Rs. in million)

Company	Head Office	Branches	Lease Raised Finance	Investment
Atlas Bot Lease Co. Ltd.	Karachi	Lahore	20.000	377.540
Asian Leasing Corp. Ltd.	Lahore	Lahore	123.530	384.250
National Asset Leasing	Karachi	Karachi	21.808	72.273
National Development Leasing Cor. Ltd.	Karachi Islamabad	Lahore	549.211	1197.123

18 Rafique Jabir, "Leasing Companies' Role in Pakistan's Economic Growth" *Economic Review*, Vol. 21; No. 3 (March, 1990), p. 15.

Table 2 (cont.)
Pakistan: Major Leasing Firms and their Investments
(Rs. in million)

Company	Head Office	Branches	Lease Raised Finance	Investment
Orix Leasing Pakistan Ltd.	Karachi Peshawar Sialkot Faisalabad	Lahore	178.655	817.572
Pakistan Industrial Commercial Leasing Limited	Karachi Lahore Islamabad Multan	Faisalabad	86.000	154.371
Pakistan Industrial Leasing Corp. Ltd.	Lahore Faisalabad Islamabad	Karachi	376.397	348.570
TOTAL			1357.601	3351.699

Statement showing fund mobilization and Investment In Lease financed by Leasing Companies for the year 1991 Source: Javeed M. Pannni "Leasing in Pakistan, Past, Present and Future: Industry Overview" *Economic Overview*, Vol. 24, No. 3 (March, 1993) p. 27.

Problems

The promoters of many leasing companies complain of the grievous lack of Government support by way of incentives and concessions to facilitate mobilization of public funds. As a result, these companies have to depend heavily on borrowing from banks and DFIs or bank on their own capital fund. Those companies that are joint ventures between large business groups and financial institutions have a definite edge over the independent leasing companies that have no bank affiliations.[19] It has therefore been suggested that these companies should be allowed to raise funds by direct financing such as through term deposits and public and private placement of bonds: The Modaraba companies may be allowed to issue Musharika Certificates to be redeemed on maturity

19 *Ibid.*

with profit. This will enable the leasing companies and Modarabas to mop up untapped savings and put them into investment channels to the benefit of the national economy.

The need for effective and efficient monitoring of these organizations by the Government to ensure proper utilization of funds can hardly be overemphasized.[20] In connection with this, the experts suggest that like India, here also the leasing companies should be declared non-bank financial institutions and be allowed to accept term deposits up to 10 times of their own funds. This is all the more necessary because mobilization of funds through issuance of equity capital and through flotation of bonds and debentures is a cumbersome process and expensive procedure.

However, it is disturbing to note that the basic purpose of some of the recently established Modarabas is trading. This has given rise to the fear that these Modarabas will be mainly used to reduce tax liability of the overall group by transferring profit from taxpaying companies of the group of the non-tax paying Modaraba.[21] There is an urgent need to guard against such tendencies so that the Government may not be deprived of its revenues. A group of experts maintain that the fear is unfounded because Modarabas are exempt from paying taxes only if a minimum of 90 percent of the profit is distributed to the certificate-holders. If a company distributes so much profit, it will impair its efforts to grow. It has been suggested that in order to check abuses, the Government should limit the ownership of the equity by the managers to 25 percent.

The problems faced by the leasing companies are also many and varied. They merit immediate Government attention if the companies are to attain a pattern of steady, profitable expansion. Today, Modarabas are prevented from procuring finance on the basis of a markup. Hence, it is not possible for these companies to raise funds from the general public through issuance of Term Finance Certificates. Modarabas are also disallowed to acquire foreign currency on the basis of interest while there is no restriction of others. This constitutes a serious hurdle in the way of Modarabas and has put them at a disadvantage as compared to the leasing companies which are obtaining foreign currency on interest basis.

20 *Ibid.*
21 *Ibid.*

At present, no lessor can import equipment for leasing on its account. This limits their ability to provide leases for imported equipment to lessees. In case a lessor has a lessee available to whom the equipment can be leased, he should be allowed to import it on his own account. Since industrial importers are importing machinery at concessional custom rate, the lessors should also be provided this facility.

Companies

First Al-Noor Modaraba[22]

First Al-Noor Modaraba, managed by Al-Noor Modaraba Management (Pvt.) Limited was floated on 19th October 1992. The company's objective was to engage in domestic and international trading activities as a trading house under prevalent mercantile practices that are not in violation of the injunctions of Islam. The Modaraba is specifically trading in the following commodities and products:

- Agriculture and Food Products
- Chemical & Petrochemical Products;
- Construction Materials and Capital Goods;
- Jute and Jute Products;
- Leather and Leather Products; and
- Textile Products and Fiber.

Capital Structure. The Authorized Capital of the company is Rs. 400.00 million divided into ordinary shares of Rs. 10/each, against which the aid-up capital stood at Rs. 200.00 million. The company has made investments in various industrial sectors including: banking and investment, construction, fertilizer, fiber board, insurance, sugar and trading. The company belongs to well-known Al-Noor Industrial Group.

Resource Mobilization. The company mobilizes additional resources without the element of Riba (interest) using the modes of Musharika, Morabaha, Modaraba (and all other permissible Islamic modes approved by the Religious Board).

22 Based on: "First Al-Noor Modaraba; Pakistan," *Economic Review*, Volume 24, No. 6 (June, 1993), p. 156.

Concepts of Trading Transactions. The company abides by the following trading concepts:

- Modaraba does not enter into any transaction, business, sale or purchase dealing which violates the injunctions of Islam. In all its dealings and transactions the Modaraba observes the principles of Sharia.
- Modaraba only transact sale of the products and commodities which it owns as principal or when acting as agent, the product/commodity is owned by its principal.
- The products/commodities sold or purchased are in the physical or constructive possession of the seller who also bears the risk corresponding to the possession.
- The sale price on credit is disclosed before an offer of sale.
- The contract of sale is not contingent.
- The delivery of goods or the payment of price is also not contingent on an event that may or may not occur in future.

LTV Modaraba

From a position of near bankruptcy in November 1992 (at the time of change in management), today LTV has become one of the leaders in the financial services sector. In August 1994, before the announcement of the results for the year ended June 30, 1994, LTV had a paid-up capital of Rs. 200 million. This amounted to about 2.7 percent of the Modaraba sector paid-up capital and about 8.5 percent of the sector's market capitalization. It was not only the most-traded Modaraba share but it also earned the distinction of being one of the highest traded shares on the Karachi Stock Exchange.

In 1994 the company produced a return on capital to shareholders of 66.6 percent and a dividend of 50 percent. This was a record for the Modaraba sector. As part of its strategic investment policy, LTV has purchased a controlling equity investment of Rs. 25.5 million in Interfund Housing Finance Limited (present paid-up capital being Rs. 60.0 million). The housing finance company is a joint venture with the UDL Group, Bank of Khyber, First Interfund Modaraba and Inter-Asia Leasing Company Limited.

In the continuing quest for solving the resource mobilization problem for the Modaraba Sector, the management of LTV believes that it has achieved a major breakthrough in the proposed LTV Redeemable Certificate. The proposed instrument is basically an interest-free bond with warrants attached to it and will be offered to the present shareholders of LTV. It meets the approval of the Corporate Law Authority and is being submitted to the Religious Board for the final approval. Not only will the instrument provide LTV with zero interest financing, it will dramatically increase the earnings of the Modaraba, which will be paid out to the Redeemable Certificate holders (the present shareholders of the Modaraba), after they have subscribed for the LTV Certificate through the warrants attached to the Redeemable Certificate.

In view of the excellent results for the year that ended on June 30, 1994 and taking into account that the certificate holders of LTV had not received any dividends for the past two years, the board of directors decided to announce a dividend of 97.4 percent of the net profit (after adjusting the accumulated losses from the previous years). As the Modaraba has an ambitious business expansion plan, the dividend was in the form of a 50 percent bonus (which the Modaraba will capitalize for maximum returns, to certificate holders in future years). To further meet the Modaraba's growing capital requirements the Board of Directors also recommended a 50 percent Right Issue at par.

In arriving at the net profit figure of Rs. 133,172,626, the Board of Directors decided to charge only Rs. 3.5 million as its management fee. If the maximum allowable rate of 10 percent had been charged, the fee would have amounted to Rs. 12,424,784. In addition,the board also appropriated one million Rupees for setting up a charitable technical school. "We strongly believe that it is our corporate obligation to contribute towards building a well-balanced society and a better environment. The management of LTV Modaraba pledges to make LTV a professionally run financial institution of international standards."[23]

In sum, the management of LTV Modaraba strongly believes that Pakistan today offers unique opportunities for entrepreneurs. The success story of LTV itself is one of the most prominent examples of effective use of entrepreneurial skills. Based on their optimism for Pakistan's future growth, LTV Modaraba has decided to set up a Strategic Investment department. The function of this department will be to identify viable projects and local entrepreneurs and to

23 "The Role of Modarabas in the Financial Sector," *Economic Review*, Vol. 25, No. 8 (August, 1994), p. 28.

invest in projects, including venture capital projects which encourage technology transfer and international joint ventures. During 1993-94, the first project that was identified was Spell-Fujiya Limited, operating in Hattar. The Modaraba has also decided to take majority holding in a company (LTV Power Gen. Ltd.) which will be setting up a 108 MW Power plant in Pakistan. The power project will provide high return to the Modaraba in the form of earnings and capital gains, and will also help the Modaraba develop a solid asset base. The estimated equity investment of LTV will be Rs. 200 million.

First Interfund[24]

First Interfund Modaraba (FIM) is a multipurpose Modaraba listed on all three stock exchanges of Pakistan. It is a member of the Interfund Group which includes Long Term Venture Capital Modaraba, Inter Asia Leasing Company Limited and Interfund Housing Finance Limited.

FIM was launched in May 1991 by a group of professionals dedicated to their mission of positive contribution to the economy. Initially it had a paid-up capital of R. 35 million which was increased to Rs 60 million in 1993.

The reason for this successful track record is development of innovative services supported by extensive research. The company offers the following services:

- Stock Market Investment Advisory Services
- Client Fund Management
- Corporate Research
- Stock market brokerage and placement of stocks, underwriting of public issue of shares and development and placement of corporate bonds.

The company feels that the capital market in Pakistan is mainly confined to shares, whereas the secondary market for banks' certificates, treasury bills and other instruments is still in a very rudimentary state. Even in the stock exchanges, major buying and selling decisions are made by the brokers who mostly depend on

24 Based on: "First Interfund Modaraba: Positive Contribution to Economy," *Pakistan & Gulf Economy*, (May 14-20, 1994), p. 45.

their hunch rather than detailed analysis of a company. The company feels that to gain advantage in today's market it will have to increasingly rely on its leadership in security analysis and advisory services.

Asian Leasing Corporation[25]

Asian Leasing Corporation Ltd. (ALC) is a Public Limited Company formed under the Companies Ordinance 1984 with an author feed capital on Rs. 50 million. It is a joint venture of the National Development Finance Corporation with private sector sponsors set up to promote the concept of lease financing in Pakistan. It commenced operations in 1987.

ALC is presently providing lease financing to a wide range of industrial and commercial enterprises, under full dividend financial leasing arrangements. It is geared to expeditiously service the capital investment financing needs of enterprises. ALC's main objective is to boost the national economy through provision of a wide range of sophisticated and specialized financial services to a variety of industrial and commercial enterprises for capital asset leasing.

Potential Problems Associated With Islamic Financial Systems

The replacement of an interest-based banking system by an alternative system that relies primarily on profit-sharing arrangement raises a number of fundamental theoretical and practical questions. Among the most important of these are:[26]

- How will an Islamic banking system function?
- What would be the effect of adopting such a system on the economy and, in particular, the effect on macroeconomic variables like savings and investment?
- What role if any would monetary policy play in the Islamic system?

25 Based on: "Asian Leasing Corporation Limited: Company Profile," *Economic Review*, Vol. 25; No. 3 (March, 1994), p. 25.

26 Moshin S. Khan and Abbas Mirakhor "Islamic Banking: Experiences in the Islamic Republic of Iran and Pakistan," *Economic Development and Cultural Change*, Volume 38, No. 2 (January, 1990), pp. 356-357.

Macroeconomic Stability

Research on these types of questions is still in its very early stage.[27] Nevertheless, in recent years there have been a number of studies that have attempted to conceptualize the basic ideas underlying Islamic banking as well as the likely consequences that would follow from the institution of this system. Taking the view that the reliance on profit-sharing arrangements makes the Islamic system akin to an equity-based system, relatively straightforward theoretical modes have been developed analyzing the workings of the system. In these models, depositors are treated as shareholders (as in a mutual fund or investment trust) and the banks provide no guarantee on the rate of return or the nominal volume of shares. Symmetrically, banks themselves become partners with the borrowers and accordingly share in the returns obtained from the borrowed funds.

An interesting result that emerges from such models is that the Islamic system may be better suited to adjust to shocks that can lead to banking crises than an interest-based banking system. In an equity-based system, shocks to the asset positions of banks are immediately absorbed by changes in the nominal value of shares (deposits) held by the public in banks. Therefore, the real values of assets and liabilities would be equal at all points in time. In the conventional banking system, since the nominal values of deposits are guaranteed by the bank, an adverse shock to assets of the bank can create a divergence between real assets and real liabilities – leading possibly to negative net worth for the bank – and it is not clear how the disequilibrium would be corrected and how long the process of adjustment would take.

27 Good surveys are contained in: Syed Nawab Haider Naqvi, *Islam, Economics and Society* (London: Kegan Paul International, 1994); Shahid Hasan Siddiqui, *Islamic Banking* (Karachi: Royal Book Company, 1994); Nawazish Ali Zaidi, *Eliminating Interest from Banks in Pakistan* (Karachi: Royal Book Company, 1987); M. Umer Chapra, *Islam and Economic Development* (Islamabad: International Institute of Islamic Thought, 1993). Habib A. Zuberi, "Interest Free Banking and Economic Stability" *The Pakistan Development Review*, Vol. 31, No. 4 (Winter 1992), pp. 1077-1088; Muhammad Anwar, "Islamic Banking in Iran and Pakistan: A Comparative Study" *The Pakistan Development Review*, Vol. 31, No. 4 (Winter 1992), pp. 1089-1100. Moshin Khan and Abbas Mirakhor, eds., *Theoretical Studies in Islamic Banking and Finance*, (Houston: Institute for Research and Islamic Studies, 1987); and Hamid Zanganeh, "Islamic Banking: Theory and Practice in Iran" *Comparative Economic Studies* 31 (1989), pp. 67-81; and Zaidi Sattar, "Interest Free Economics and the Islamic Macroeconomic System" *Pakistan Economic and Social Review*, Vol. XXVII, No. 2 (Winter 1989), pp. 109-138.

The elimination of a risk-free asset with a positive predetermined return is expected to have significant consequences for savings, investment, financial development, and so forth, as well as for the conduct of monetary policy. For example, in the area of investment as the adoption of a profit-sharing arrangement between the lender, that is the bank, and an investor, may raise monitoring costs and discourage investment. To avoid this adverse effect and moral hazard issues that arise when the lender and investor have different information of the profits from this investment requires the implementation of a legal and institutional framework that facilitates appropriate contracts. The form of these contracts and the mechanism for enforcing them, still needs to be spelled out. Insofar as monetary policy is concerned, the central bank would lose the ability to direct set financial rates of return in an Islamic banking system. However, theoretical work has shown that indirect methods through control of credit extended by banks, reserve requirement changes and varying of profit sharing ratios can achieve results for monetary policy similar to those in conventional interest-based economy.

Financial Viability

Although Islamic finance has been accepted as an alternative, independent system of banking free from Riba, it is still passing through a host of difficulties and impediments, namely:[28]

Financial Frauds in the Guise of Islamic Banking: During the last two decades, there have been cases of financial frauds perpetrated on the small savers under the guise of lucrative and regular financial profits using the name of Islamic techniques of financing. In Pakistan and Egypt, 70 and 50 financial companies respectively claiming Islamic business misappropriated public money and fled.

Doubts about instruments used in Islamic banking: Certain instruments used by Islamic bankers are still under criticism of some Islamic jurists. Doubts have been particularly raised regarding sale and purchase of currencies and Murabaha and financial leases. The Federal Sharia Court of Pakistan has given a judgment that the current form of markup financing in the shape of Murabaha is not in accordance with the Islamic injunctions.

28 Hussain Lawai, "Essentials of Successful Islamic Banking" *Economic Review*, Vol. 25, No. 10 (October, 1994) p. 79.

Inadequate Economic, Financial and Legal Infrastructure: In most countries where Islamic banking has emerged, common areas of concern are known to exist namely that their economic policies are lopsided, volatile, and without a uniform regulatory framework. In addition, fiscal and financial disciplines are lacking, while their legal frameworks and taxation structures are generally ineffective and not conducive to Islamic banking.

Difficulties Specific to Pakistan

These problems have to one extent or another affected the growth and development of Modarabas in Pakistan. The result has been that:[29]

- While more than 50 Modarabas have been listed on the Karachi Stock Exchange, most of them are quoted below par.
- While most Modarabas declare stock dividends, local banks are often reluctant to extend funds to them on a Musharika basis.

One explanation for these patterns is that the Modarabas are over regulated. Another explanation focuses on the changing tax liabilities and differential controls and access to credit faced by the Modarabas.

Regulation

Modaraba companies are regulated by six bodies:

- Registrar Modarabas
- Controller of Capital Issues
- Corporate Law Authority
- Monopoly Control Authority
- Stock Exchange and
- The State Bank of Pakistan

In part, the large number of regulators reflects the government's concern over the increasing number of financial scandals. The scope of these regulations covers the capital structure of the Modarabas, creation of reserves, and per party exposure. Some of the more salient features of these rules are:[30]

- Modarabas will maintain, both for funded and non-funded financing in each case for the first two years of operation, a ratio of equity to liabilities not less than 1:7 and thereafter the ratio may be increased for each to 1:10.
- Not less than 20 percent of after tax profit of Modarabas shall be credited to a reserve fund till such time as the reserve fund equals the amount of paid-up capital of the Modaraba. Thereafter a sum of not less than 5 percent of the after-tax profit will be credited to a reserve fund.
- Not less than 15 percent of the Modarabas liabilities excluding paid-up capital, borrowings from financial institutions, and the lease key money will be invested in NIT units or any other investment permitted by the Religious Board.
- Total exposure of the Modaraba to a single borrower will not exceed 20 percent of the equity. In the case of listed companies, total exposure will not exceed 20 percent of the total assets of Modaraba.
- While granting a credit facility, every Modaraba will ensure that the total facilities availed by the borrower do not exceed 10 times the capital and reserves (free of losses) of the borrower.
- Every Modaraba will have at least 70 percent of its assets in its principle line of business.

With regard to regulation it is clear that certain controls are unnecessary:[31]

- Until late 1994, Modarabas were not allowed to mobilize resources through offering deposits. As such, the regulatory role of the Central Bank of Modarabas was unjustified.

29 Shabbir H. Kazmi "Modarabas: Thriving Now" *Pakistan & Gulf Economist*, (September 24-30, 1994), pp. 6-7.

30 "Modarabas: Excessive Control Stunts Development," *Economic Review*, (March, 1995), p. 21.

31 Shabbir H. Kazmi, "Modarabas: Thriving Now," *Pakistan & Gulf Economist*, Vol. 13, No. 39 (September 24-30, 1994), pp. 6-7.

State Bank monitoring is excessive. State Bank procedu[res] require the (often understaffed) Modarabas to file over returns annually.

- Changes in regulations occur frequently and unpredictable. The result has been to underm[ine] the confidence of Modaraba Certificate holders and general public.

Taxation Problems

Another problem faced by the Modarabas is their changing status.[32] In the 1992 budget the government proposed initiatin[g] 25 percent tax on the income of the Modarabas (after their three years of tax exemption). This action created considera[ble] uncertainty, as the Modarabas were assumed to be permane[ntly] tax-free. In addition, the tax removed the obligation of paymen[t of] 90 percent dividend to Modaraba Certificate holders, thus creat[ing] uncertainty over future dividends. The change in taxation not o[nly] applied tax on income but to a number of other taxes as we[ll:] Turn Over Tax of half a percentage and Withholding Tax [of] 2.5 percent.

After considerable bargaining between the Modaraba Associat[ion] of Pakistan and the Ministry of Finance the Turn Over Tax w[as] withdrawn from Modaraba Sector. The Withholding Tax [of] 2.5 percent on transactions of the Modarabas was reduced [to] 1 percent. Further concessions were allowed in the budget of 1[...] with two years lower taxation of 12.5 percent, after three ye[ars] exemption, and thereafter 25 percent tax.

However, the tax problems of the Modarabas have not be[en] completely resolved. The application of Capital Value Tax [on] purchase of commodities by Modarabas (which were tax exe[mpt] and were, therefore, unable to show an assessment of tax for [the] Assessment Year 1993) has badly hurt the Modarabas doing Leas[ing] business. They have to pay a 5 percent Capital Value Tax [on] purchase of any vehicle or machinery for leasing and are theref[ore] losing business to Leasing Companies (unaffected by this tax). T[he] Withholding tax of 2 percent on imports of goods and 2.5 perc[ent] on sales is also adversely affecting the trading of the Modarabas.

32 Syed Iradat Husain "Modarabas Operations, Challenges and Fut[ure] Prospects," *Economic Review*, (March, 1994), p. 39.

Regulatory Discrimination

Regarding controls:

- The government has imposed a condition, whereby Modarabas are required to retain 20 percent of their income as reserve. This directly reduces that amount disbursable to certificate holders.
- While the Modarabas can issue Bonus Certificates against this reserve, consistent issue of Bonus Shares will eventually reduce the income per certificate that they can offer.
- Until quite recently (they can now issue Musharaka Certificates on the pattern of COIs),[33] Modarabas were not allowed to raise money by issuing Certificates of Investment (COIs). Instead, they were forced to increase availability of funds through issue of Right Shares. This was a very dangerous practice. On the one hand, it reduced earnings per share and on the other, it was a direct constraint on expanding the business. While investment banks could have a liability versus an equity ratio of 10 to 1 Modarabas could not do so. This put them in a disadvantageous position.
- Similarly, while leasing companies have been allowed to raise money through issues (COIs), Modarabas, until very recently, were not allowed to issue COIs on Musharika basis. This put the Modarabas doing leasing business in a disadvantageous position – finance constraints have restricted the growth of Modarabas.

Availability of Finance

As noted, the Modaraba sector in general has been facing liquidity problems and operating in an environment that essentially restricted their resource mobilization capacity. This has kept the Modaraba Certificates grossly under-priced in spite of the presence of quite a few well-managed Modaraba companies:[34]

33 "Modarabas: Excessive Control Stunts Development," *Economic Review*, Vol. 26, No. 3 (March 1995), p. 22.

34 "Modarabas: Excessive Control Stunts Development," *Economic Review*, (March, 1995), pp. 21-23.

- Many companies are in the leasing business. The average lease is spread over three to five years. For their business to grow, Modarabas need additional funds each year since the rentals received are not sufficient to main the same volume of fresh leasing every year.
- Not so much a problem for the larger Modarabas as they have started receiving funds from international agencies like IFC and others. However, a large portion of these funds is in the form of equity, not as in the form of a more flexible line of credit.

Another reason for limited availability of funds with the commercial banks is the pressure on them to buy Treasury Bills offered by the government to meet its borrowing. In Pakistan due to unsound planning and indiscriminate spending the government has become the biggest borrower. It is obvious that once such large amounts are committed in these bills, the remaining amounts are not sufficient to meet the requirement of the private sector for projects that play an important part in increasing GDP and the creation of employment.[35]

In addition, the government offers such excellent returns on their securities that people who want a safe, stable guaranteed return and securities of investment prefer to invest in these securities. For example, the Defense Saving Certificates alone offer a return of nearly 30 percent profit per annum. It is surprising that only the Government of Pakistan offers such fantastic returns on its securities, whereas around the globe government securities carry a low return, as these are considered the most secured investment. Perhaps the only reason is that the government of Pakistan is the biggest domestic borrower and to attract such huge amounts it has to offer high returns.

Again, it should be noted that many of these problems will be mitigated by recently allowed Musharika certificates. This long-awaited decision will help the Modarabas in resource mobilization, a crisis prevailing since the inception of this Islamic mode of financing in 1985.

The Corporate Authority has also agreed in principle to allow Modarabas to introduce yet another financial instrument, Redeemable Certificates to strengthen the financial condition of the institutions. A specific number of these certificates will be

35 *Ibid.*

convertible to Modaraba Certificates at a predetermined price every year and will be transacted at the stock exchanges.

Assessment and Future Prospects

Modarabas have come to fill an important niche in the country's evolving capital markets. While commercial banks provide short-term finances and non-bank financial intermediaries are involved in project financing, the Modarabas occupy an important slot for providing short-and medium term finance.[36]

The attractiveness of Modarabas lies in their versatility. They can engage in leasing and contribute to capital formation directly. They can provide short-term funds for seasonal inventory and trade and thus support the marketing of commodities and exportable surpluses. Or, they can invest in the capital market and contribute to its development. Finally, Modarabas can be established for the specific purpose of taking over and rehabilitating sick industries, or those being privatized. Venture capital Modarabas could be the financing solution to the funding problems of many small enterprises with the potential for growth.[37]

Yet it is clear that Modarabas have yet to reach their true potential in the financial intermediation market. In the more developed financial system of the West and South East Asia, mutual funds are playing a far greater role in the mobilization and investment of funds for economic development than in Pakistan.

On the other hand the Modarabas are facing a number of serious problems:

- In recent years too many Modarabas have been floated in too short a time. The result has been excessive competition and falling rates of profit.
- They are controlled and regulated by too many agencies and face too many arbitrary restrictions.
- The basic problem is financial. Modarabas have to obtain Sharia-based finance – that is Mushairika-based finance from institutions or Morahaba-based. Normally commercial banks are not inclined to finance the Modarabas because they operate on more or less a markup basis which is interest.

36 *Ibid.*

37 Inam-ul Haq "The Role of Non-Bank Financial Institutions" Anjum Nashim ed., *Financing Pakistan's Development in the 1990s*, (Karachi: Oxford University Press, 1992), pp. 419-428.

- The same applies to international agencies like the World Bank, IFC, and the Islamic Development Bank who would normally finance and allocate lines of credit. Recently, however, these organizations are indicating a willingness to consider taking shares in the Modarabas. If this trend continues, a valuable source of finance will become available to the Modarabas.[38]

If we assume that changes in government policy toward the Modarabas will enable them to better compete for resources and that willingness of international agencies to lend to the Modarabas will increase, several developments are likely during the remainder of the 1990s:[39]

- With increased competition, there is likely to be a series of mergers involving the smaller Modarabas.
- With the passage of time, the international agencies will understand the working of Modarabas and also develop faith in this Islamic mode of financing and will participate more readily.
- The allowing of COIs on Musharika basis will provide a major stimulus to the Modarabas by enabling them to raise adequate funds to expand their operations.

---

38 Mohammad Zafarunnin "Modarabas:• Progress and Future Prospects," *Pakistan & Gulf Economist*, Vol. 14, Nos. 5 & 6 (February 11-17), p. 26.

39 Shabbir H. Kazmi, "Modarabas: Thriving Now," *Pakistan & Gulf Economist*, Vol. 13, No. 39 (September 24-30, 1994), p. 7.