

REPORT OF THE TASK FORCE

Ministry of Law, Justice and
Human Rights

TABLE OF CONTENTS

S. No.	Contents	Page No.
1.	Case History	1-9
2.	The Court Order	10-12
3.	Mandate of the Task Force	13
4.	Dates of the meetings of the Task Force	14
5.	Summary of the deliberations made in Task Force	15-23
6.	Notifications/Draft Ordinances (Annexed)	
	a. Notifications of the Task Force of M/O Law.	24-31
	b. Draft Ordinance to repeal the Interest Act 1839	32-33
	c. Draft Ordinance to further amend the Banking Companies Ordinance.	34-36
	d. Draft Ordinance to bring the-laws relating to the Money Lenders in conformity with the injunctions of Islam.	37-55
	e. Amendments proposed in the HBFC Act	56-59
	f. Draft Prohibition of Riba Ordinance.	60-68
	g. Draft Financial Transaction Ordinance.	69-83
	h. Riba Oriented Repeal and Amending Ordinance-2002	84-92
	i. Minutes of the Meetings of the Task Force.	93-144

Case History

The question of Elimination of Riba from the Economy and Development of a New Economic Order on the Foundations of Islam has been on the national agenda of Pakistan since its inception. In fact, the correspondence exchanged between Allama Muhammad Iqbal and Quaid-I-Azam Muhammad Ali Jinnah in the mid 1930s showed that this question was raised between the two great leaders who agreed that the problem of poverty could not be addressed unless to principles of Shariah were invoked and implemented in the context of modern economic realities. In his voluminous writings, Allama Muhammad Iqbal has discussed the issue of Riba and the bank interest and considered it to be a source of unending malaise for the Muslim community. During the Pakistan movement the Quaid-i-Azam reportedly constituted a working Group to prepare report on how the economic system in the future Islamic State could be based on Islamic principles. In his last public address, while he was inaugurating the State Bank of Pakistan on July 1, 1948 he had stated:

“I shall watch with keenness the work of your Research Organization in evolving banking practices compatible with Islamic ideals of social and economic life. The economic system of the West has created almost insoluble problems for humanity and to many of us it appears that only a miracle can save it from disaster that is now facing the World. It has failed to do justice between man and man and to eradicate friction from the international field. On the contrary, it was largely responsible for the two World Wars’ in the last half century. The adoption of Western economic theory and practice will not help us in achieving our goal of creating a happy and contented people. We must work our destiny in our own way and present to the world and economic system based on true Islamic concept of equality of manhood and social justice. We will thereby be fulfilling our mission as Muslims and giving to humanity the message of peace which alone can save it and secure the welfare, happiness and prosperity of mankind.”

The Constituent Assembly of Pakistan, in pursuance of these declarations of the founding fathers of our country as well as the provisions of the Objective Resolution provided in the successive Constitutional Drafts, presented before the Constituent Assembly in 1952, 1953 and 1954 that the Riba would be eliminated from the national economy. The same commitment was reiterated in the Constitutions of Pakistan adopted and promulgated in 1956, 1962, 1972 and finally in 1973.

It was also decided as far back as in 1952 that no law should be made in Pakistan which was repugnant to the Quran and Sunnah and that all existing laws should be brought in conformity with the Quran and the Sunnah. These provisions have existed in all the previous Constitutions and find a clear and emphatic mention in the Constitution of Pakistan 1973. There has never been any dispute or disagreement about the contents and implications of these provisions. However, there has been a difference of opinion whether the authority to decide that a particular law is or is not in accordance with the Quran and Sunnah should be given to the Parliament or to the superior judiciary. The overwhelming majority of the religious parties and the Islamic scholars have always held that this authority should vest in the superior judiciary. On the other hand there has been a strong view that the parliament should decide whether a law is or is not in accordance with the dictates of Islam. A third view held by some Ulema suggests that the authority be given to a body of Ulema appointed by the President to pronounce rulings on this issue.

The Constitution of Pakistan accommodates all these views in a balanced and effective manner. It provides for a body of Ulema in the form of the Council of Islamic Ideology which has an advisory role. The authority of the parliament is unlimited to examine and decide whether or not a law is in conformity with the

Quran and the Sunnah. At the same time there are two judicial forums, namely the Federal Shariat Court and the Shariat Appellate Bench of the Supreme Court to examine and decide whether a law is or is not in conformity with the Quran and the Sunnah. However, this authority has been limited by the Constitution itself and does not extend to the Constitution, the Muslim Personal Law and the law relating to the procedure of a court or tribunal. Initially the court was also barred from looking into the fiscal and financial laws. In the beginning this bar was for a period of three years and was provided on the plea that Riba could not be eliminated with one stroke of a pen and required a gradual move. This period was however, subsequently extended and came to an end in June 1990.

On the extension of the jurisdiction of the Federal Shariat Court to fiscal and financial laws in June, 1990 some 113 petitions were filed in the Federal Shariat Court challenging different laws and their various provisions praying that the court should declare those laws or provisions to be repugnant to the Quran and the Sunnah and, therefore, ultra vires the Constitution. The learned Federal Shariat Court heard this case at length and finally delivered a judgement on November 16, 1990 declaring the interest--Act 1839 to be totally in Conflict with the injunctions of Islam and various provisions of the following laws to be repugnant to such injunctions:

1. The Government Savings Banks Act, 1873.
2. The Negotiable Instruments Act, 1881.
3. The Land Acquisition Act, 1894.
4. The Code of Civil Procedure, 1908.
5. The Co-operative Societies Act, 1925.
6. The Co-operative Societies Rules, 1927.
7. The Insurance Act, 1938.
8. The State Bank of Pakistan Act, 1956.

9. The West Pakistan Money Lenders Ordinance, 1960.
10. The West Pakistan Money Lenders Rules, 1965.
11. The Punjab Money Lenders Ordinance, 1960.
12. The Sindh Money Lenders Ordinance, 1960.
13. The N.W.F.P. Money Lenders Ordinance, 1960.
14. The Baluchistan Money Lenders Ordinance, 1960.
15. The Agricultural Development Bank of Pakistan, Rules 1961.
16. The Banking Companies Ordinance, 1962.
17. The Banking Companies Rules, 1963.
18. The Banks (Nationalization) (Payment of Compensation) Rules, 1974.
19. The Banking Companies (Recovery of Loans) Ordinance, 1979.

This judgement was appealed against in the Shariat Appellate Bench of the Supreme Court where the appeal remained pending from 1991 to 1999. The causes of this inordinate delay are not known. The appeal was finally fixed for hearing before the Shariat Appellate Bench of the Supreme Court and the hearing continued with short intervals from February 22, 1999 till July 6, 1999. The judgment in the appeal was delivered on December 23, 1999 in which the judgment of the Federal Shariat Court was upheld with slight modifications. The learned Supreme Court also considered it prudent to lay down certain guidelines in the measures to be taken and the infrastructure and legal framework to be provided for the implementation of the judgment. These measures may be summarized as follows.

1. Strict austerity measures to drastically curtail the Government expenditure should be adopted and implemented and deficit financing should be controlled to facilitate economic revival.
2. An Act to regulate the Federal Consolidated Fund and Public Account, Provincial Consolidated Fund and Public Account required to be enacted by the Parliament and the Provincial Assemblies, respectively. This law will have to take care of borrowing powers, purpose and the scope of borrowing, its utilization, regulation and monitoring process including all ancillary matters.
3. Law providing for necessary prudential measures ensuring transparency be enact. These laws may include laws like Freedom of Information Act, the Privacy Act and Ethics Regulations of United States, Financial Services Act of Britain.
4. Establishment of institution likes Serious Fraud Office to control white collar and economic crimes.

5. Establishment of credit rating agencies in the public sector.
6. Establishment of evaluators for scrutiny of feasibility reports.
7. Establishment of special departments within the State Bank;
 - a) Shariah Board for scrutiny and evaluation of Board's procedures and products and for providing guidance for successfully managing the Islamic economics.
 - b) A Board for arranging exchange of information, financial institutions about feasibility of projects, evaluation thereof and credit rating of institutions, corporations and other entities.
 - c) A board for providing technical assistance to the financial institutions / banks with regard to the anomalies emerging in in the practical operation of the financial institutions or difficulties arising during operation of financial products, transactions or arrangement between the financial institutions and the consumers / clients. This may also take the shape of the Islamic Financial Service Institution. Such institutions will also work in the field of shares and investment certificates underwriting promotion and market making to help in activation of primary and secondary markets. The rise of such institutions, whose functions include the promotion of financial instruments and to work as their catalysts in the financial market, would be of great help and support to Islamic Banking. Among the factors which would help the creation and spreading of such institutions is the extension of tax incentives to their operation as well as to Islamic banks to benefit from their services.

In order to give time to the government to implement the judgment in a graded way the court decided to appoint different dates for different phases of the transformation. For this purpose the honorable Supreme Court issued the following directions:

- (1) The Federal Government shall, within one month from the announcement of this judgment, constitute in the State Bank of Pakistan a high-level Commission fully empowered to carry out, control and supervise the process of transformation of the existing financial system to the one conforming to Shariah. It shall comprise Shariah scholars, committed economists, bankers and chartered accountants.
- (2) Within two months from the date of its constitution, the Commission shall chalk out the strategy to evaluate, scrutinize and implement the reports of the Commission for Islamization of the Economy as well as the report of Raja Zararul Haq Commission after circulation it among the leading banks, religious scholars, economists and the State Bank and Finance Division, inviting their comments and further suggestions. The strategic plan so finalized shall be sent to the Ministries of Law, Finance and Commerce, all the banks and financial institutions to take steps to implement it.
- (3) Within one month from the announcement of this judgment, the Ministry of Law and Parliamentary Affairs shall form a Task Force, comprising its officials and two Shariah scholars from the Council of Islamic Ideology or from the Commission of the Islamization of Economy, to:-
 - (a) Draft a new law for the prohibition of Riba and other laws as proposed in the guidelines above.
 - (b) To review the existing financial and other laws to bring them into conformity with the requirements of the new financial system.
 - (c) To draft new laws to give legal cover to the new financial instruments.
 - (d) The recommendation of the Task Force shall be vetted and finalized by the “Commission for Transformation” proposed to be set up in the SBP, after which the Federal Government shall promulgate the recommended laws.

- (4) Within six months from the announcement of this judgement, all the banks and financial institutions shall prepare their model agreements and documents for all their major operations and shall present them to the Commission for Transformation in the SBP for its approval after examining them.
- (5) All the joint stock companies, mutual funds and the firms asking in aggregate finance above Rs. 5 million a year shall be required by law to subject themselves to independent rating by neutral rating agencies.
- (6) All the Banks and financial institutions shall, thereafter, arrange for training programmes and seminars to educate the staff and the clients about the new arrangements of financing their necessary requirements and their effects.
- (7) The Ministry of Finance shall, within one month from the announcement of this judgement form a Task Force of its experts to find out means to convert the domestic borrowings into project-related financing and to establish a mutual fund that may finance the Government on that basis. The units of the mutual fund may be purchased by the public and they will be tradable in the secondary market on the basis of net asset value. The certificates of the existing bonds of the existing government savings schemes based on interest shall be converted into the units of the proposed mutual fund.
- (8) The domestic inter-government borrowing as well as the borrowings of the Federal Government from State Bank of Pakistan shall be designed on interest free basis.

- (9) Serious efforts shall be started by the Federal Government to relieve the nation from the burden of foreign debts as soon as possible, and to renegotiate the existing loans, Serious efforts shall also be made to structure the future borrowings, if necessary, on the basis of Islamic modes of financing.
- (10) The following laws being repugnant to the Injunctions of Islam shall cease to have effect from 31st March, 2000:-
1. The Interest Act, 1839.
 2. The West Pakistan Money-Lenders Ordinance, 1960.
 3. The West Pakistan Money-Lenders Rules, 1965.
 4. The Punjab Money-Lenders Ordinance, 1960
 5. The Sindh Money-Lenders Ordinance, 1960.
 6. The N.W.F.P Money-Lenders Ordinance, 1960.
 7. The Balochistan Money-Lenders Ordinance, 1960.
 8. Section 9 of Banking Companies Ordinance, 1962.
- (11) The other laws or the provisions of the laws to the extent that those have been declared to be repugnant to the Injunctions of Islam shall cease to have effect from 30th June 2001.

In pursuance of these directions of the Supreme Court the government had set up a Task Force under the chairmanship of Dr. Mahmood Ahmad Ghazi, Minister for Religious Affairs, Zakat and Usher with the Ministry of Law and Parliamentary Affairs as the secretariat of Task Force.

The Court Order:

Setting aside all the misleading contentions and wrong perceptions in support of interest, the learned Shariat Appellate Bench of the Supreme Court passed an exhaustive judgement on 23 December, 1999 holding that “any amount big or small, over the principal, in a contract of loan or debt is “Riba” prohibited by Holy Qur’an, regardless of whether the loan is taken for the purpose of consumption or some production activity.

Declaring the prevalent financial system in the country to be interest based and against the injunctions of Islam as laid down in the Holy Qur’an and Sunnah, the honourable court also ordered its transformation into the one conforming to Sharia. While identifying and striking down the laws hit by its judgement, the honourable court has also enunciated the measures needed to be taken and the infrastructure and legal framework to be provided for the purpose by the Government. Appointing different dates for different phases of the transformation, the Court also directed the formation of a Task Force in the Ministry of Law and Parliamentary Affairs, comprising its officials and Sharia Scholars.

The function of the Task Force, as directed by the Court, is to a) draft a new law for the prohibition of Riba and other laws as per given guidelines b) to review the existing financial and other laws to bring them into conformity with the requirements of the new financial system and to c) draft new laws to give legal cover to the new financial instruments.

The Court further directed that the recommendations of the Task Force should be vetted and finalized by the “Commission for Transformation of Financial System set up in the SBP, after which the Federal Government should promulgate the recommended laws.

The following laws being repugnant to the Injunctions of Islam have ceased to have effect from 31st March 2000:

1. The Interest Act, 1839.
2. The West Pakistan Money Landers Ordinance, 1960.
3. The West Pakistan Money lenders Rules. 1965.
4. The Punjab Moneylenders Ordinance, 1960.
5. The Sindh Moneylenders Ordinance, 1960
6. The NWFP Moneylenders Ordinance, 1960.
7. The Baluchistan Moneylenders Ordinance, 1960.
8. Section 9 of Banking Companies Ordinance, 1962.

The other laws or the provisions of the laws to the extent that those have been declared to be repugnant to the Injunctions of Islam shall cease to have effect from 30th June, 2001. This date was, however, further extended upto 30th June 2002.

In pursuance of the Directions of the Court, a Task Force was constituted under the Chairmanship of Dr. Mahmood Ahmad Ghazi, Minister for Religious Affairs, Zakat and Ushr vide Law, Justice and Human Rights Division’s Notification No. F.8(I)/99-I.R, dated: 22 January, 2000, Later, in order to accelerate the process of reviewing the laws and to enrich the deliberations with a broader spectrum of experts, the Task Force was reconstituted vide Ministry of Law,

Justice and Human Rights Notification No. F.8(I)/99-LR, dated 7 February, 2001.

According to the Order of the Court, the recommendations of the Task Force are required to be vetted and finalized by the “Commission for Transformation of Financial System established in the State Bank of Pakistan after which the Federal Government is to promulgate the recommended laws.

....

Mandate of The Task Force

- ❖ to draft a new law for the prohibition of Riba and other laws as proposed in the guidelines:
- ❖ to review the existing financial and other laws to bring them in conformity with the requirements of the new financial system: and,
- ❖ to draft new laws to give legal cover to the financial instruments.

Dates of meetings of the Task Force

The Task Force held successive meetings in a short span of time to chalk-out a clear plan of action. As the strategies to achieve the objectives were fine-tuned and basic work complete, more time was given to the members to ponder over the draft ordinances in their individual capacity and assemble to reach consensus.

SNO	Dates of Meetings of the Task Force	
1.	1 st meeting	4 Feb., 2000
2	2 nd meeting	9 Feb., 2000
3.	3 rd meeting	18 Feb., 2000
4.	4 th meeting	29 Feb., 2000
5.	5 th – 7 th meeting	March – June, 2000
6.	8 th meeting	27 June., 2000
7.	9 th meeting	13 July, 2000
8.	10 th meeting	31 October, 2000
9.	11 th meeting	16 November, 2000
10.	12 th meeting	12 December, 2000
11.	13 th meeting	23 December, 2000
12.	14 th meeting	3 April, 2001
13.	15 th meeting	20 April, 2001
14.	16 th meeting	02 May, 2001
15.	17 th meeting	22 May, 2001
16.	18 th meeting	07 June, 2001
17.	19 th meeting	19 June, 2001
18.	20 th meeting	02 nd May, 2002

Summary of the Deliberations Made in the Task Force

In pursuance of the directions of the Shariat Appellate Bench of Supreme Court of Pakistan in the judgement in appeal in Riba case, the Task Force set up in the Ministry of Law, Justice and Human Rights vide notification No. F.8(I)/99-LR, dated January 22, 2000 met for the first time on February 1, 2000.

Cognizant of the reports of the Council of Islamic Ideology submitted in 1980, the report of the Commission for Islamization of Economy constituted in 1991 and final report of the same Commission, reconstituted in 1997 which was submitted in August, 1997, the Task Force, started its work with the understanding that substantial ground work has already been done to suggest inter alia, the strategy for transformation of the existing financial system to the Islamic one.

Initially the Task Force held its meetings in quick succession. The initial draft laws in respect of the following were prepared and forwarded to the State Bank of Pakistan as early as 3 March, 2000.

- ✓ A Draft Ordinance to repeal the Interest Act 1839.
- ✓ A Draft Ordinance to further amend the Banking Companies Ordinance.
- ✓ Five Draft Ordinances to bring the laws relating to money lenders in conformity with the injunctions of Islam,

The HBFC ACT 1952 was also examined and some amendments in the Act were proposed on 27 May, 2000 to cater for the needs of the Corporation. However, it was felt that after the promulgation of the ordinance for prohibition of Riba further changes would be needed in the Act Comments of the Transformation Commission as well as the HBFC were invited and it was maintained that only such amendments

should be made at this stage as were extremely necessary to implement the judgement of the Supreme Court. The remaining detailed amendments were deferred until the promulgation of Riba Ordinance which was meant to be the seminal legislation on this subject containing basic provisions to regulate all other laws having relevance to the fiscal, financial and economic policies and activities in Pakistan.

It was felt that unless the banks were re-structured as holding companies, it might not be easy for them to successfully and smoothly practice Islamic modes and adopt Musharakah, Mudarabah and Ijarah etc. as alternatives to interest. The matter was proposed to be considered threadbare both independently as well as in the joint meetings of the members of the Task Force and the Commission on Transformation of the Financial System. Efforts were made to develop common perception and understandings about the road map to be followed to reach the targets.

The Code of Civil procedure 1908 and the Negotiable Instruments Act, 1881 were taken up for discussion by the Task Force in its meeting held on 16 November, 2000. In the context of section 34(1), 34(11) and 34 a(1) and 34 a(11) of the Code, several views were expressed with the objective of covering the inflationary impact on the capital of the aggrieved party. These included taking Gold and Silver as the basis for determining the amount of compensation to be paid to the aggrieved party. It was, however, argued that due to frequent fluctuations of gold price in the international markets it would not be an appropriate solution. It was also recommended that some strong provisions should be made to serve as deterrent for the defaulters/grabbers. The question of giving discretionary powers to the courts to determine the amount of fine or penalty to be imposed on the defaulters/ grabbers and the amount of compensation to be paid to the aggrieved party also came under thorough discussion. The Task Force decided that in case of willful default, there ought to be some penalty in addition to the compensation for the victim or aggrieved party. The penalty may be in the form of simple imprisonment. The following recommendations were, therefore, formulated against the subject provisions of the Code :-

- i. In a decree for the payment of money. The court may, in the decree, order the payment of liquidity damages equal to such amount and in such a manner as may have been provided in the agreement, and in case no such damages are provided in the agreement, the court may order the payment of such amount the decree holders by way of compensation as it may deem fit keeping in view the requirement of justice and equity.
- ii. Where the judgment debtor fails to pay the decretal amount along with the damages or compensation specified in sub section (1), the court may on the application to the decree holder, impose such penalty as it may deem fit in addition to the amount payable in sub section (1) and the court may order that ap part of the penalty or the fine imposed on the defaulter which shall not be less than 50 thereof be paid to the decree holder.
- iii. If the judgment debtor fails to comply with the direction of the court under sub-section (2) within a period of ninety days, he shall be deemed to be a willful defaulter and liable to simple imprisonment till the full and final payment and the discharge of the liabilities under sub-section (2).

The draft Riba Ordinance remained the focus of attention of the Task Force and was discussed extensively in coordination with the Transformation Commission. There had been voices suggesting that while the foreign loans have already been recommended to be outside the purview of the Riba Ordinance, the existing internal and pending loans should also be exempted from the same till such time that concrete proposals were ready to convert the existing obligations into riba-free and shariah compatible modes.

The nature constitution, functions, the status and the role proposed to be assigned to the Shariah Board to be established in the State Bank of Pakistan under the Riba Ordinance came under discussion of the Task Force in its meeting held on 12 December 2000. There were varying views of different forums on this subject.

The question whether it should be made mandatory for the state Bank of Pakistan to implement its recommendations on all Shariah issues or to make the Bank responsible to exercise as traditional regulatory authority even in areas relevant to Shariah was discussed in detail in the latter situation, it was suggested that the State Bank should be made to explain to the Board the reasons for not following some of its recommendations.

A question was raised as the course of action in the event of difference of opinion between the State Bank of Pakistan and the Board as it could lead to conflict and mismanagement. Identifying the cases in which such a conflict might take place. Some members referred to the Bonds floated by the Government in the year 2000 as an example. It was mentioned that this question was agitated by the Transformation Commission as well for being at variance with the decision of the Supreme Court. It was pointed out that the Transformation Commission was asked to propose any acceptable alternative for the government to raise some more loans but the same had not been suggested. Majority of the members of the Task Force felt that it would be advisable to stick to the scope of the shariah Board as specified in the draft Riba Ordinance as the other course would be too risk and might create uncertainties that might lead to confusion.

In the context of the CPC. The Task Force has drafted a substantive provision rather than individually amending the large number of sections hit by the judgment of the Supreme Court.

In the context of the Riba Ordinance there has been a consensus among the members of the Task Force that the draft should be confined strictly to the prohibition of Riba while the general principles of Islamic financial transactions should be incorporated in a subsequent law to be drafted in due course of time. The seminal law should not be containing the minute details regarding the shariah compliant modes of financing. On 20 December 2000 the draft Riba Ordinance as

amended by the Vice Chairman of the Task Force was circulated among the Members of the Task Force along with a comparative statement of the draft Prohibition Or Riba Ordinance 2000 and views of the Commission for Transformation of Financial System SBP Karachi. A revised paper entitled payment of Penalty and Punishment or determination Criteria for payment and Punishment as prepared by one of the Member of the Task Force was also circulated to the Members. The documents were considered in the meeting of the Task Force on 23 December, 2000 in which comments of the CTFS on the earlier draft were also taken into consideration. On 24 December, 2000 a copy of the Draft Riba ordinance as revised in the said meeting was forwarded to the CTFS for information and further comments.

In a meeting of the Task Force held on 3 April, 2001 the first working draft of Islamization of Financial Transactions Ordinance – 2001 drafted by Mr. Ebrahim Sidat, Member of the CTFS was considered. It was intralia decided that: -

- a) certain definitions contained in the Ordinance were unnecessary and needed to be dropped.
- b) The Principles of the Islamic Financial Transactions should be incorporated in a separate Law to be carefully drafted.
- c) The Sharia Complaint modes may not be incorporated in the body of the law itself and instead, be notified from time to time by the GOP/SECP and the SBP in consultation with the Shariah Board.
- d) d)The seminal law should not be over burdened with such minute details as given in the schedule of the draft ordinance in question.

On April 5, 2001 the Chairman of the CTFS was also informed of the decisions of the meeting of the Task Force held on 3 April, 2001 in order to seek his acceptance/ observations on the above points of the Task Force. However, the CTFS reviewed

and finalized the seminal law in its 21st meeting held on May 8 & 9, 2001 and forwarded the same to the Chairman of the Task Force on 11 May, 2001.

Earlier a consensus was developed in a meeting of the Task Force held on 20-4-2001 that in order to convey an effective message to the masses in connection with elimination of Riba the Ordinance may be called the “Prohibition of Riba Ordinance 2002” and not as “Islamization of Finance Transaction Ordinance, 2001” as suggested by the CTFS. A thorough discussion was subsequently held and certain amendments were carried out in the draft prohibition of Riba Ordinance for its finalization in the next meeting of the Task Force. Extracts from- Government savings Bank’s Act. Negotiable instruments Act, Land Acquisition Act. Civil Procedure Code and other Laws along with the suggested amendments were circulated to the members for further discussion.

On 2 May, 2001 the Task Force started the final review of the draft Prohibition of Riba Ordinance, 2000. After a thorough examination, detailed discussion and dedicated deliberation, some amendments were made and the prohibition of Riba Ordinance 2001 was finalized in the meeting of the Task Force on 22 May 2002.

The final version of the draft “Prohibition of Riba Ordinance” was submitted to the Minister for Law, Justice and Human Rights as well as the Minister for Finance on May 23, 2001.

On 7 June, 2001 the Task Force started the review of the remaining laws. The Government Savings Bank Act 1873. Land Acquisition Act 1894. Code of Civil Procedure 1908, The Cooperative Societies Act, 1925 and the Agricultural Development Bank Rules 1961 were reviewed and amended after a thorough discussion on the basis of the comments prepared by the Members on the drafts circulated earlier. Discussion on the following was not felt necessary as these had already been repeated or replaced.

- a) Insurance Act – 1938
- b) The Banking Companies (Recovery of Loans) Ordinance, 1979

In the meeting of the Task Force held on 19 June, 2001 it was decided that the Sharia complaint modes and other such provisions should form part of the schedule and the same should not be inserted in the body of the seminal law regarding Prohibition of Riba. It was considered to be an ongoing process and schedule could be modified and amended as and when required. The strategy as to the further course of action to be adopted by the Task Force to accomplish its assignment was also discussed. It was decided to prepare a road map for future working in close coordination with the transformation Commission.

On 2 May, 2002 the Task Force considered a draft Law for the amendment and repeal of certain laws for elimination of Riba. A view was expressed that while the Task Force has to remain within the terms of reference and therefore the discussion on economic repercussions and financial analysis might not be within its scope, yet the Task Force could not divorce itself entirely from such discussions because any legislation without such consideration and analysis would create financial chaos. Therefore, the Task Force ought to examine the economic repercussions and conduct financial analysis thereof or the CTFS might be required to examine such issues. A joint meeting of the Task Force and the Commission to work out the policy parameters was also recommended. The draft Financial transactions Ordinance was then discussed and approved in principle.

Notifications of the Task Force of the Ministry of Law.

<u>No</u>	<u>.Date</u>
F.8(1)/99.LR.	22-01-2000
F.8(1)/99.LR.	01-02-2000
F.8(1)/99.LR.	23-01-2001
F.8(1)/99.LR.	07-02-2001
F.8(1)/99.LR.	04-01-2002

GOVERNMENT OF PAKISTAN
LAW, JUSTICE HUMAN RIGHTS DIVISION

Islamabad, the 22nd January ,2000

NOTIFICATION

No F-8 (1)/99-LR, - In pursuance to the directions of the Shariat Appellate Bench of Supreme Court of Pakistan in the agreement in appeal in Riba case, the competent authority in the Ministry of Law, Justice and Human Rights is pleased to constitute a Task Force comprising of the following: -

- | | | |
|----|---|----------|
| 1- | Dr. Mahmood Ahmad Ghazi,
Member Council of Islamic Ideology
(representative of the Council). | Chairman |
| 2- | Dr. Tariq Hassan,
Adviser of Finance Minister,
Ministry of Finance (representative of the
Commission for Islamization of
Economy. | Member |
| 3- | Mr. Zafar Ali Khan,
Deputy Draftsman, Ministry of Law,
Justice and Human rights. | Member |
| 4- | Mr, Zafar Hussain,
Assistant Draftsman, Ministry of Law,
Justice and Human rights. | Member |

The Task Force is given the following assignments: -

- a) to draft a new law for the prohibition of Riba and other laws as proposed in the guidelines.
- b) to review the existing financial and other laws to bring them into conformity with the requirements of new financial system.

c) to draft the new laws to give legal cover to the financial instruments.

The recommendations of the Task Force are to be vetted finalized by the Commission for transformation proposed to be set in the State Bank of Pakistan before promulgation by the federal Government.

Justice
(Faqir Muhammad Khokkar)
Secretary

The Manager,
Printing Corporation of Pakistan Press,
Islamabad – for favour of publication in the
Gazette of Pakistan, Extraordinary
Part – III.

No.F.8(a)/99-LR

.....

Islamabad January 22, 2000.

Copy to: -

1. The Principal Secretary to the president, president's Sectt. (Public), Islamabad.
2. COS to the chief Executive Sectt, Islamabad,
3. The Secretary Ministry of commerce Islamabad,
4. The Secretary Ministry of Finance, Islamabad,
5. The Secretary, council of Islamic Ideology, Islamabad,
6. The Registrar, supreme court of Pakistan Islamabad.
7. P.S. to the Law Secretary Islamabad.
8. Officers concerned.

(Malik Miandad Khan)
Section officer

GOVERNMENT OF PAKISTAN
LAW, JUSTICE HUMAN RIGHTS DIVISION

Islamabad, the 1st January ,2000

NOTIFICATION

No. F.U(1)/99-LR. - In continuation to the Notification of even number dated 22-01-2000 and in pursuance to the direction of the Chairman Task Force, Mr, Zafar Hussain, Assistant Draftsman, Member of the Task Force is hereby appointed to act as Secretary of the Task Force.

JUSTICE
(FAQIR MOHAMMAD KHOKAR)
SECRETARY

The Manager,
Printing Corporation of Pakistan Press,
Islamabad - for favour of publication in the
Gazette of Pakistan, Extraordinary
Part-III.

TO BE PUBLISHED IN PART – III
OF THE EXTRA ORDINARY GAZETTE
OF PAKISTAN

Islamabad 23rd January 2001

NOTIFICATION

No.F.B(1)/99-L.R. In supersession of this Ministry's notification of even number dated 1-2-2000, the competent authority has been pleased to appoint Ch. Muhammad Younis, Deputy Secretary (Opinion) as Secretary of the Task Force on Riba, in addition to his own duties.

(Rana Atta Muhammad)
Section officer

The Manager,

Printing Corporation of Pakistan Press,
Islamabad – for favour of publication in the
Gazette of Pakistan, Extraordinary Part-III

No. F.B(1)/99-LR

Islamabad 23rd January 2001

Copy forwarded for information to the following:

1. The Principal Secretary to the President, President's Secretariat, Islamabad.
2. COS to the Chief Executive, Chief Executive's Secretariat, Islamabad.
3. The Secretary, Ministry of Commerce Islamabad.
4. The Secretary, Ministry of Finance Islamabad.
5. The Secretary, Council of Islamic Ideology Islamabad.
6. P.S. to chairman, Task Force on Riba, Islamabad.
7. The Registrar, Supreme Court of Pakistan Islamabad.
8. P.S. to Secretary Law, Justice & Human Rights Islamabad
9. Ch. Muhammad Younis, Deputy Secretary (Opinion) M/Law
10. The Section officer (Admin-I) M/Law Islamabad.
11. Concerned file
12. Officers concerned etc.

(Rana Atta Muhammad)
Section officer

GOVERNMENT OF PAKISTAN
MINISTRY OF LAW, JUSTICE & HUMAN RIGHTS

Islamabad February 7, 2001

NOTIFICATION

No.F.B(1)/99-LR In Partial supersession/ Modification of this Ministry's notification of even number dated 22nd January 2000 the competent authority is pleased to reconstitute the Task Force comprising of the following:

- | | | |
|----|---|----------------|
| 1. | Dr. Mahmood Ahmad Ghazi
Minister for Religious Affairs,
Islamabad | Chairman |
| 2. | Dr. Tariq Hassan,
Adviser to Finance Minister, Islamabad | Vice- Chairman |

- | | | |
|----|--|-----------|
| 3. | Dr. S.M Zaman,
Chairman Council of Islamic Ideology,
Islamabad | Member |
| 4. | Justice (Retd)Sh. Amjad Ali,
Member Council of Islamic Ideology,
Islamabad. | Member |
| 5. | Mr. Abdul Rehman Qureshi,
Commissioner Enforcement &
Monitoring Securities Exchange
Commission of Pakistan, Islamabad | Member |
| 6. | Mrs. Naeem Hussain Nigar,
Director Legal, State Bank of Pakistan
Karachi | Member |
| 7. | Mr. Ali Munir,
Senior Executive vice President M.C.D
Karachi (Tele. 021-2415003) | Member |
| 8. | Ch. Muhammad Younis,
Deputy Secretary (Opinion) Ministry of
Law, Islamabad | Secretary |

2. The assignments of the Task Force and other terms and conditions shall remain the same as defined in the earlier notification. The Task Force may co-opt Advisor(s)/Consultant(s) and establish committee(s) appoint members thereto. The work done by the Task Force may be saved.

(Bin Yamin)
Joint Secretary (II)

The Manager,
Printing Corporation of Pakistan Press,
Islamabad – for favour of publication in the
Gazette of Pakistan, Extraordinary Part-III

No. F.B(1)/99-LR

Islamabad February 7, 2001

Copy forwarded for information and necessary to the following:

- 1- The Principal Secretary to the President,
President's Secretariat, Islamabad.

- 2- COS to the Chief Executive, Chief Executive's Secretariat, Islamabad.
- 3- The Secretary, Ministry of Commerce Islamabad.
- 4- The Secretary, Ministry of Finance Islamabad.
- 5- The Secretary, Council of Islamic Ideology Islamabad.
- 6- The Registrar, Supreme Court of Pakistan Islamabad.
- 7- P.S. to Secretary Law, Islamabad
- 8- All officers of the Task Force.

(Rana Atta Muhammad)
Section Officer
Tel: 920 2966/Ext.229

TO BE PUBLISHED IN PART – III OF THE
EXTRA ORDINARY GAZETTE OF PAKISTAN.

Islamabad, the 4th January, 2001

NOTIFICATION.

No.F.B(1)/99-L.R. In supersession of this Ministry's notification of even number dated 23-1-2000, the competent authority has been pleased to appoint Syed Sultan Ahmad. Joint Secretary, as Secretary of the Task Force on Riba, in addition to his own duties.

(Rana Atta Muhammad)
Section officer

The Manager,
Printing Corporation of Pakistan Press
Islamabad – (for favour of publication in the
Gazette of Pakistan, Extraordinary Part-III)

No.8(1)/89-LR

Islamabad, the 4th January, 2001

Copy forwarded for information to the following:

- 1- The Principal Secretary to the President,
President's Secretariat, Islamabad.
- 2- COS to the Chief Executive, Chief Executive's
Secretariat, Islamabad.
- 3- The Secretary, Ministry of Commerce Islamabad.
- 4- The Secretary, Ministry of Finance Islamabad.
- 5- The Secretary, Council of Islamic Ideology Islamabad.
- 6- Sayed Sultan Ahmad joint Secretary Law, Justice & Human Rights
Islamabad
- 7- P.S. to Chairman, Task Force for Riba, Islamabad.
- 8- The Registrar, Supreme Court of Pakistan Islamabad.
- 9- P.S. to Secretary Law, Justice & Human Rights Islamabad
- 10- Concerned file

(Rana Atta Muhammad)
Section Officer

INTEREST ACT (REPEAL) ORDINANCE
2000 – AN INTRODUCTION

Shariat Appellate Bench of the Supreme Court has held the Interest Act 1839 to be totally against the injunctions of Islam. The Law has to be repealed in toto. The Task Force has, therefore, considered it appropriate and necessary to draft. As a first step, a law to repeal the Interest Act 1839. This Law would provide the basis from where to proceed for promulgation of all other laws necessary to ensure a Riba free system in the country.

ORDINANCE NO _____ OF 2000
AN
ORDINANCE

To repeal the Interest Act, 1839

WHEREAS it is expedient to repeal the Interest Act, 1839:

AND WHEREAS the National Assembly and the Senate Stand suspended in pursuance of the proclamation of the fourteenth day of October, 1999, and the Provincial Constitution Order No 1. As amended:

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

NOW, THEREFORE, in pursuance of Proclamation of the fourteenth day of October, 1999, and Provincial Constitution Order as well as Order No 9 of 1999, and in exercise of all powers enabling him in the behalf the president of the Islamic Republic of Pakistan is pleased to made and promulgate the following Ordinance.

1- Short title and commencement: - (1) This Ordinance may be called the Interest Act (Repeal) Ordinance. 2000.

2- Repeal of Act XXXII of 1839 - The Interest Act, 1839 (XXXII of 1839), is hereby repealed.

.....

BANKING COMPANIES (THIRD AMENDMENT)

ORDINANCE. 2002- AN INTRODUCTION

The Section 9 of the banking Companies Ordinance 1962 was held ultra vires of the Shariah by the Honourable Supreme Court. The Task Force has drafted a substitution that provides a clear guideline to the Banking Companies for their operations giving due regard to genuine mark-up transactions in accordance with the principles of Shariah.

ORDINANC NO _____ OF 2000
AN
ORDINANCE

Further to amend the Banking Companies Ordinance 1962.

WHEREAS it expedient to amend the Banking Companies Ordinance, 1962 (LVII of 1962), for the purpose hereinafter appearing.

AND WHEREAS the National Assembly and the Senate stand suspended in pursuance of the proclamation of the fourteenth day of October, 1999, and the Provincial Constitution Order as well as Order No 1 as amended.

AN WHEREAS the President is satisfied circumstances exist which render it necessary to take immediate action:

NOW, THEREFORE, in pursuance of Proclamation of the fourteenth day of October, 1999, and Provincial Constitution Order as well as Order No 9 of 1999, and in exercise of All powers enabling him in the behalf the president of the Islamic Republic of Pakistan is pleased to made and promulgate the following Ordinance.

1- Short title and commencement: - (1) This Ordinance may be called the Banking Companies (Third Amendment) Ordinance 2000

2- It shall come into force at once.

2. Amendment of section 9, Ordinance LVII of 1962. In the Banking Companies Ordinance. 1962 (LVII or 1962). For Section 9 the following shall be substituted, namely: -

“9 Prohibition of Trading. - Except as authorized under section 7, no banking company shall directly or indirectly deal in the buying or selling or bartering of goods or engage in any trade or buy, sell or barter goods for others, otherwise than in connection with bills of exchange received for collection or negotiation.

Provided that the state Bank of Pakistan may, in order to ensure genuine mark-up transactions authorise any banking company to directly or indirectly deal in the buying or selling or bartering of goods engage in any trade or buy, sell or barter goods for others, in accordance with prudential regulations as may be framed by it from time to time.”

**PUNJAB/SINDH/NWFP/BALUCHISTAN MONEY-LENDERS
(REGULATION AND ISLAMIZATION) ORDINANCE, 2000- AN
INTRODUCTION**

In order to amend and bring the law relating to money lenders, their registration, licensing and regulation of their accounts in conformity with the injunctions of Islam, the proposed Ordinance envisages all the business of money lending to be on the basis of equity participation, Musharakah, Mudarabah, Murabahah and any other mode financing permissible under shariah. While laying down the conditions for issuance and renewal of licenses to money lenders, the draft law elaborates the circumstances under which a license could be cancelled by collector. Enunciating the right and procedure for appeal against disqualification, the draft law specifies the conditions under which a court of appeal would stay the operation of the order.

The draft law also gives clear guidelines to be followed by money lenders in the context of accounting as also the penalties to be imposed in case of non-compliance of the prescribed procedure and other matters that exposed the money lenders or debtors to be punitive provision of the draft law.

AN
ORDINANCE

To amend and bring the law relating in money lenders into conformity with the injunctions of Islam.

WHEREAS it is expedient to amend to bring the law relating to money lenders, their registration, licensing and the regulation of their accounts into conformity with the injunction of Islam.

WHEREAS it is necessary to eliminate Riba form the national economy,

Now, THEREFORE, in pursuance of the proclamation of the fourteen day of October, 1999, the governor is pleased, to make and promulgate the following ordinance: -

CHAPTER 1
PRELIMINARY

1. (1) This ordinance may be called the Punjab/Sindh/N.W.F.P./Baluchistan money, lenders (Regulation and Islamization) ordinance, 2000.
(2) It extends to the whole of Pakistan.
2. In this Ordinance, unless the context otherwise requires, the following expression shall have the meaning hereby respectively assigned to them, that is to say____
 - (a) “bank” means a bank, which is a “scheduled bank” as defined in the state bank of Pakistan Act, 1956, or a banking company registered under the Companies Ordinance, 1984.

- (b) “capital” means the sum of money which is money-lender invests in a business or trade or any commercial enterprise through lending money or advance or a loan;
- (c) “Collector” includes such officer as may be specially empowered by Government of discharge the functions of a collector under this ordinance;
- (d) “company” means a company registered under the companies ordinance 1984, or any other law relating to companies;
- (e) “Commissioner” includes an additional commissioner or any other officer specially empowered by government to perform the duties of the Commissioner under this ordinance;
- (f) “co-operative society” means a society registered or deemed to have been registered under the co-operative societies act, 1912, or any other law relating to co-operative societies;
- (g) “Court” includes a court acting in the exercise of its insolvency jurisdiction’
- (h) “debtor” means a person to whom a money is lent or a loan is advanced;
- (i) “Effective license” means a license which has not been suspended or cancelled or which has not expired;
- (j) “Government” means the federal Government;
- (k) “interest” means all forms of Riba and includes the return to be made over and above what was actually lent, whether same is charged or sought to be recovered specifically by way of interest or otherwise, but does not include any sum lawfully charged for or on account of actual costs or expenses;

- (1) “loan” means an amount of money or kind advanced for investment in a trade, business or commercial enterprise on an agreed ratio of profit to be divided between the money-lender and the debtor under this ordinance and shall include any transaction which the court finds to be in substance a loan, but shall not include--
- i. An advance in kind made by a landlord to his tenant for the purposes of husbandry; provided the market value of the return does not exceed the market value of the advance as estimate at the time of advance;
 - ii. A loan to, or by, or a deposit with, any society or association registered under the societies registration act. 1860, or under any other enactment relating to religious or charitable societies;
 - iii. A loan advance by or to be central or any provincial Government or by or to any local authority or other body corporate set up under the authority of the federal or any Provincial Government;
 - iv. A loan advance by a bank, a co-operative society or a company whose accounts are subject to audit by a certified auditor under Companies act, 1913;
 - v. A short-term loan advance by a trader to a trader, in the regular course of business, in accordance with trade usage;
 - vi. An advance made on the basis of a negotiable instrument as defined in the negotiable instruments act, 1881 other than a promissory note;

- (m) “money-lenders” means a person carrying on the business of advancing loan or lending money;
- (n) “prescribed” means prescribed by rules made under this Ordinance;
- (o) “principal” in relation to a loan means the amount actually lent to the debtor;
- (p) “trader” means a person who in the regular course of business, buys and sells goods or other property, whether moveable or immovable, and shall include____

a wholesale or retail merchant
 a commission agent,
 a broker,
 a manufacturer,
 a contractor,
 a factory owner

but shall not include a person who sells only his own agricultural produce or cattle, or buys agricultural produce or cattle for his own use.

Chapter II

REGISTRATION AND LICENSING OF MONEY LENDERS

3. (1) No money-lender shall carry on the business of money-lending except on the basis of equity participation, Musharakah, Mudarabah, Murabahah or any other mode of financing permissible under shariah, and unless he holds an effective license under this ordinance.

(2) a money-lender may apply to the collector for a license which may be granted for such period, in such form and on such conditions and on payment of such fees, as may be prescribed.

(3) No money-lender shall carry on the business of money-lending on the basis of interest and except in accordance with the terms and conditions of such license.

(4) An application for a license under this section or for the renewal of a license shall be in such form and shall contain such particulars as may be prescribed.

(5) when an application for the renewal of a licence has been received from a money-lender before the expiry of the period of his licence, the existing licence shall be deemed to have been extended unless order is issued otherwise for reason to be recorded.

4. The collector shall maintain a register of money-lenders licensed under the last proceeding section in such form as may be prescribed.

5. (1) The collector may, on his own motion or on the application of a debtor, for reasons to be recorded in writing, cancel the licence issued to a money-lender on any one or more of the following grounds, namely: -

- i. that the money-lender has been held by a court to have contravened the provision of sections 13 and 14 in more than two suits;
- ii. that the money-lender's suit has been dismissed with a finding that he has made, dishonestly or fraudulently, a material alteration in any document relating to a loan;
- iii. that the money-lender's suit has been dismissed with a finding that the suit was based on a fraudulent transaction or was fraudulent;
- iv. that the money-lender has been found guilty by a court of forgery or cheating in respect of a transaction;
- v. that the money-lender has been found by a court to have engaged in any Riba-based transaction or has charged interest irrespective of its rate on any amount of money lent by him;

- vi. that the money-lender has been found by a Court to be responsible for an entry relating to a loan or to the profit accounting to his business showing the amount of the sum advanced to be in excess of that actually advanced or showing the amount of profit to be less than what has actually accrued.
- vii. that the money-lender or any person responsible or proposed to be responsible for the management of the money-lender's business is disqualified under this Ordinance for holding a licence;
- viii. that the money-lender has been convicted to any ordinance under Chapter V of the Ordinance;

Provided that no licence shall be cancelled without giving the money-lender concerned an opportunity of being heard,

Provided further that where the cancellation of licence is based on a judgment, decree or order of a Court, and such judgment, decree or order is subsequently modified in review or set aside in appeal or revision, the Collector shall, on an application made in that behalf by the money-lender, review his order.

(2) The collector in cancelling a licence under sub-section (1) may specify the period for which the licence shall not be renewed or a fresh licence shall not be granted.

(3) Any debtor making an application under this section which is frivolous or vexatious shall be liable to be punished with simple imprisonment which may extend to six months or with fine or with both.

6. The name of a money-lender whose licence has been cancelled under section 5 shall be struck off the register of money-lenders maintained under section 4;

Provided that a licence shall not be deemed to be cancelled nor the name of the money-lender deemed to be struck off the register until the expiry of the period of appeal prescribed under sub-section (2) of section 8, and where an appeal has been preferred against the order of cancellation, until the order has been confirmed in appeal.

7. A money-lender whose licence has been suspended or cancelled under section 5, 8 or 11, may, within thirty days of the order suspending or cancelling his licence, apply to the Collector for grant of a certificate specifying the loans in respect of

which a suit may be instituted or the decree in respect of which an application for execution may be presented by him.

8. (1) An appeal shall lie to the Commissioner against an order of the collector passed under section 5 or an order refusing to grant a certificate under section 7.

(2) Every such appeal shall be filed within thirty days of the date of the order appealed against.

(3) The provision of the limitation Act, 1908, applicable to appeals, shall, so far as may be, apply to appeals preferred under this section, and for the purposes of the said provisions the collector shall be deemed to be a court.

(4) In every appeal filed under this section, an opportunity shall be given to the appellant of being heard against the order appealed from.

9. A money-lender may, after the termination of the period for which his licence has been cancelled or the expiry of the period for which he has been disqualified under section 11, apply to the Collector under section 3 for the grant of a licence;

Provided that full particular of every Disqualification incurred by the applicant and every cancellation or suspension of a licence held by him under this Ordinance are specified in the application.

10. (1) Notwithstanding anything contained in any other enactment, a suit by a money-lender for recovery of a loan or an application by a money-lender for execution of a decree relating to a loan shall be dismissed unless at the time of the institution of the suit or at the time of presentation of the application for execution of the decree, as the case may be, the money-lender--

- (a) holds an effective licence granted under section 3; or
- (b) holds a certificate granted under, section 7 specifying the loan in respect of which the suit instituted or the decree in the which the application for execution is presented.

(2) No court shall allow any claim in respect of a loan advanced by a money-lender unless it is satisfied that at the time when the loan was advance the money-lender held an effective lessee.

11. (1) A court Convicting a money-lender of an offence under this Ordinance or trying a suit to which he is a party may, if satisfied that such money-lender has committed such contravention of the provisions of this Ordinance, or has violated the rules made under this Ordinance, as in its opinion, makes him unfit to carry on the business of money-lending-

- (a) order that the licence held by such money-lender be suspended for such period as the court may think fit, or cancelled;
- (b) declare any such money-lender, or any such money-lender is a firm or a company or a society, any person responsible for the management of the business of money-lending carried on by such firm, company or society, to be disqualified for holding a licence for such period as the court may think fit;
- (c) cause the particular of the conviction and of any order made by the court under this section to be endorsed or by any person affected by the order, and shall cause copied of its order to be sent to the collector by whom the licence was granted for the purpose of entering such particulars in the register of money-lenders maintained under section 4.

(2) Any person aggrieved by an order of the court under this section may appeal against such order to the court to which an appeal ordinarily lies from an appealable decree or sentenced of the Court passing the order or where the court passing the order is a civil Court from whose decree no appeal ordinarily lies, to the principal court having original civil jurisdiction within the local limits of whose jurisdiction such civil Court is situate.

(3) Every such appeal shall be filed within fifteen days of the order appealed-against and the provisions of the Limitation Act, 1908, applicable to appeals shall, so far as may be, apply to appeals preferred under this section.

(4) The Court which passes an order under this section or the court of appeals may, if it thinks fit, pending, stay the operation of the order.

(5) Any licence required by a court for endorsement in accordance with sub-section (1) shall be produced in such manner and within such time as the court may direct, by the person by whom it is held.

(6) Powers conferred on a Court under this section may be exercised by any court in appeal and in revision.

(7) Where the court of appeal or revision sets aside or varies an order passed under this section, it shall order that any endorsement made in pursuance thereof upon a licence held by a money-lender shall be cancelled or modified, as the case may be.

12. (1) Any person whose licence has been cancelled or suspended in accordance with the provisions of this Ordinance shall, during the period for which such order of cancellation has effect or during the period of suspense, as the case may be, be deemed to be disqualified for holding a licence.

(2) No person whose licence has been suspended or cancelled under the provisions of this Ordinance shall be entitled to any compensation for the suspension or cancellation of this licence, or to the refund of any licence fee paid or deposit made in respect thereof.

CHAPTER III REGULATION OF ACCOUNTS

13. Every money-lender shall--

- (a) Deliver to the debtor, at the time a loan is advanced, a statement showing in clear and distinct terms the amount and date of the loan, the name and address of the debtor and the proportion or ratio of profit to be paid to him.
- (b) Give to the debtor a plain and complete receipt for every payment made on account of any loan at the time of such payment and permit him or his agent to endorse such payment on the document if any, evidencing the loan;

14. (1) Every money-lender and every debtor shall

- (a) regularly record and maintain an account for each debtor or the money lender, as the case may be, separately, of all transaction to any loan advanced to that debtor,
- (b) furnish each debtor or the money-lender, as the case may be, every six months with a legible statement of accounts signed by the money-lender or his agent of any balance or amount that may be outstanding

against such debtor on the 30th day of June or the 31st day of December in each year and such statement of accounts shall include all transactions relating to the loan entered into during the six months to which the statement related, and shall be sent on or before the 31st day of August in the case of any balance outstanding on the 30th day of June and on or before 28th day of February in the case of any balance outstanding on the 31st day of December.

(2) The accounts shall be so kept that items due by way to genuine profit shall be shown as separate and distinct from the principal sum, and separate totals of principal and profit shall maintained.

Provided that if the person to whom the loan has passed be a minor or a widow, such minor or widow shall not be bound to maintain or furnish the accounts prescribed by this section.

15. Notwithstanding anything contained in any other enactment: -

- (a) in any suit or proceeding relating to a loan the court shall, before deciding the claim on the merits, frame and decide the issue, whether the money lender and the debtor has complied with the provisions of clauses (a) And (b) of sub-section (1) of section 14.
- (b) If the court finds that the provisions of clause (a) of sub-section (1) of section 14 have not been complied with by the money lender or the debtor, as the case may be, the Court shall, if the money-lender's claim is established in whole or in part, disallow the whole or such portion of the profit found due, as may seem reasonable to the court in the circumstances of the case and shall disallow costs:
- (c) if the court finds that the provisions of clause(b) of sub-section (1) of section 14 have not been complied with by the money-lender, or the debtor, as the case may be, the court shall in determining the amount of profit due to the money-lender exclude every period for which the party concerned omitted duty to furnish the accounts as required by clause (b) of sub-section (1) of section 14.

*Explanation---*A person who has kept his accounts and sent his six-monthly statements of accounts in the form and manner prescribed in sub-section (4) of section 14 shall be held to have complied with the provisions of that sub-section, in

spite of errors and omissions, if the Court finds that the errors and omissions have been accidental and not material and that the accounts have been kept in good faith with the intention of complying with the provisions of that sub-section.

CHAPTER IV MISCELLANEOUS

16. In the case of loans in kind, the money value of the commodity at the time, when and the locality where, the loan was advanced shall, for the purposes of this Ordinance, be deemed to be the principal of the loan and in determining the amount which may subject to the provision of this ordinance, be decreed in respect of a loan repayable in kind, the Court shall take into consideration the market value of the commodity in the said locality at the date or dates of repayment.

17. Any Agreement between a money-lender and a debtor or an intending debtor for the payment by the debtor or intending debtor to the money-lender of any sum on account of costs, charge or expenses incidental or relating to the negotiations for or the granting of, the loan shall be illegal if any sum paid to a money-lender by the debtor or intending debtor or account of any such costs, charges or expenses, exceeds one per centum of the total amount lent.

Provided that nothing in this section shall debar a money-lender from recovering costs of investigation title, of stamp duty and registration of documents and other necessary and incidental expenses actually incurred by the money-lender.

CHAPTER V PENALTIES

18. Where, in a suit for the recovery of a loan, the Court is satisfied that the entry relating to the loan has been made by a money-lender or at his instance in any document showing the amount of the sum advanced to be in excess of that neutrally advance plus permissible expenses incurred under section 17, and plus a legitimate and genuine profit as shown in the accounts provided by the debtor, the Court shall disallow the whole claim with costs, unless the money-lender satisfies the Court that the entry was accidental or was the result of a *bona fide* mistake.

19. Whoever carries on the business of money-lending without being in possession of an effective licence under section 3 shall be punished with imprisonment for a term which may extend to six months, or with fine or with both.

20. Any money-lender who charged interest, shall be punished with imprisonment for a term which may extend to six months or with fine, or with both.

21. (1) Whoever, being a party to a suit for the recovery of a loan, dishonestly uses in such suit any document in which, he is aware that there is any statement or entry relating to such loan which is false in any material particulars shall be punished with imprisonment which may extend to one year or fine or with both.

(2) If the court is satisfied, after such preliminary enquiry, as it thinks fit that there is ground for enquiring into an offence under sub-section (1) the Court may record a finding to that effect and prefer a complaint of the offence in writing to a magistrate of the first-class having jurisdiction, and such magistrate shall deal with such complaint in the manner provided in the Code of Criminal Procedure, 1898.

22. (1) No money-lender shall take from a debtor or intending debtor any note promise to pay, bond or security, nor shall he take from any debtor or intending debtor any instrument in which the principal amount is left blank for being filled in at a later date.

(2) Whoever intentionally contravenes the provisions of sub-section (1) shall be punished with fine which may extend to one hundred thousand rupees.

(3) Notwithstanding anything contained in any law, every note, promise to pay bond, security or document referred to in sub-section (1) shall be void and unenforceable.

23. Whoever molests, or abets, the molestation of a debtor for the purpose of recovering or attempting to recover a loan shall be punished with imprisonment which may extend to six months, or with fine not exceeding five thousand rupees, or with both.

Explanation--- For the purpose of this section, a person who, with intent to abstain from doing or to do any act which he has right to do or to abstain from doing---

(a) obstructs or uses violence to or intimidates such other person, or

- (b) persistently follows such other person from place to place or interferes with any property owned or used by him or deprives him of or hinders him in the use thereof,

24. Whoever, without reasonable cause, makes default in producing the licence required to be produced under section 11 for endorsement shall be punished imprisonment which may extend to one year or with fine or with both.

25. Whoever, being disqualified for holding a licence applies for or obtains a licence during the pendency of such disqualification without disclosing the fact thereof, shall be punished with imprisonment which may extend to one year or with fine or with both.

26. Whoever obliterates or causes to be obliterated or attempts to obliterate an endorsement entered on a licence under this Ordinance or abets such obliteration or attempt shall be punished with imprisonment which may extend to two years or with fine which may extend to fifty thousand rupees, or with both.

27. Whoever intentionally makes default in complying with or intentionally abets in contravention of any of the provision of this Ordinance shall, if no specific penalty has been provided in this ordinance be punished with fine which may extend to five thousand rupees.

28. Offences under section 19 and 23 shall be cognizable within the meaning of clause (1) of sub-section (1) of section 4 of the code of criminal procedure, 1908.

29. (1) Government may make rules for carrying out purposes of this ordinance.

(2) In particular and without prejudice to the generality of the foregoing provision such rules make provide for all or any of the following matters.

- (a) the form of the application for a licence;
- (b) the form of a licence and the condition subject to which a licence shall be issued or renewed.
- (c) the scale of fees for the issue or renewal of a licence;
- (d) the place where a money-lender shall apply for a licence;
- (e) the form in which a register of money-lender is to be kept under section 4;

- (f) the procedure before the collector and the Commissioner in proceedings under section 5 and 8;
- (g) the panel of scripts and languages from which a money lender in a particular area may select one at his option under sub-section (4) of section 14.
- (h) the form and the numerals to be used in the accounts kept and furnished by a money-lender;
- (i) the scale of costs to be paid by such debtors as may demand that the six-monthly accounts should be furnished in a particular script.

(3) Rules made under this section shall be subject to the conditions of previous publication.

30. The enactments specified in the schedule are repeated to the extend specified in the fourth column thereof.

SCHEDULE***Enactments Repealed*****(Section 30)**

Year	No	Short Title	Extend of repeal
1930	I	The Punjab regulation of accounts act	The whole
1935	V	The North West Frontier Province Regulation of Accounts Act	The whole
1938	III	The Punjab Registration of Money-Lenders Act as applicable to the Former Bahawalpur State	The whole
1944	XIV	The Sind Money-Lenders Act	The whole
1934	VII	The Punjab Relief of Indebtedness Act	Sections 37 and 38
1939	IV	The North-West Frontier Province Agriculturists Debtors Relief Act	Section 4
1960	XXIV	The Punjab Money-Lenders Ordinance, 1960	The Whole
1960		The N.W.F.P Money-lenders Ordinance, 1960	The Whole
1960		The Sindh Money-Lenders Ordinance,1960	The Whole
1960		The Baluchistan Money-Lender Ordinance, 1960	The Whole

**HOUSE BUILDING FINANCE CORPORATION AMENDMENT
ORDINANCE, 2000 AN - INTRODUCTION.**

Some sections of the HBFC act 1952 have been directly or indirectly affected by the judgement of supreme Court. The Task Force examined all the sections in depth. It also consulted the representative of the Corporation. After debate it was felt that only such amendment should be made all the stage as were extremely necessary for implementation of the judgement of the Supreme Court and the remaining detailed amendment should be left to be undertaken after the promulgation of seminal legislation containing basic provisions to regulate all other laws having relevance to the fiscal financial and economic policies and activities in Pakistan.

The proposed amendment in the HBSC act 1952 basically envisages shariah compliment payment of dividend declared out of profit by the corporation to the government and other shareholders rising of funds, funding arrangements, share of the corporation in the net rental income and the payment of principal that the draft law prohibited service charges and provides guideline for utilization of the demand charges.

ORDINANCE NO OF 2000
AN
ORDINANCE

Further to amend the house building finance corporation Act-1952.

WHEREAS it expedient to amend the house building finance corporation Act- 1952 (Act no XVII O- 1952), for the purpose of bringing it in conformity with the Injunctions of Islam: -

WHEREAS the National Assembly and the Senate are not in session in pursuance of the Proclamation of the fourteenth day of October, 1999.

AND WHEREAS the president is satisfied the circumstances exist which render it necessary to take immediate action.

NOW therefore, in pursuance of the powers conferred under the article 89 of the constitution of Islamic republic of Pakistan read with article 3 (1) of the provisional constitution order of fourteenth of October 1999 (Chief Executive's Order No. 1 of 1999) and in exercise of all powers of enabling him in this behalf, the president of Islamic republic of Pakistan is pleased to make and promulgate the following ordinance:

1. Short title and commencement: -

(1) This ordinance may be called the House Building Finance Corporation (Amendment) Ordinance 2000.

(2) It shall come its force at once.

2. Amendment of Section-4(2). In the House Building Finance Corporation Act 1952 (XVII of 1952) for section-4(2) the following shall be substituted, namely:

4(2) The corporation shall pay to the Federal Government or any Bank or Financial Institution such ratio of profit on the capital subscribed by the Federal Government or the Bank or Financial Institution under Sub-Section (1) as may be- mutually agreed upon the federal government or the Bank or Financial Institution with the corporation

and which shall be notified in the Official Gazette by the Federal Government.

3. Amendment of section 21 (1) (a), 21 (1) (b) and 21 (2) In the House Building Finance Corporation Act 1952 (XVII of 1952) for section 21 (1) (a), 21 (1) (b) and 21 (2) the following shall be substituted, namely:

21 (1)

(a) by issuing certificates for its investment on partnership basis and

21 (1)

(b) By taking loans on such terms or issuing such instruments as may be approved by the State Bank of Pakistan.

Provided that the total amount due by the Corporation on such certificates, loans and instruments on other liabilities, contingent or otherwise, of the corporation shall not at any time be allowed to exceed such limits as the Federal government may by notification in the official Gazette, determine.

24 (2) To be omitted.

4. Amendment of Section 24 (9), 24 (11), 24 (12) and 24 (20). In the House Building Finance Corporation Act 1952 (XVII of 1952) for sub section 24 (9), 24 (11), 24 (12) and 24 (20) the following shall be substituted, namely:

24 (9) The investment so made shall be adjusted by purchasing such member of units on monthly basis as may be prescribed by regulations.

24 (11) The net rental income, gradually adjusted and reduced as against the amount of rent paid, shall be assessed by the Corporation for a period of three financial years commencing from the financial year in which the proposal has been accepted and shall be reviewed every three years till the entire investment is repaid.

24 (12) The share of the corporation in the net rental income shall be determined as the ration between the investment of the corporation and the total estimated cost of the house at the time of the execution of the deed of assignment and partnership and shall be revised accordingly after adjustment of the investment amount.

24 (20) All contacts based on interest or fixed return entered into By the Corporation on or after 31st July 1989 shall remain operative and be Deemed to have been converted into interest free investment based on condition laid down in this section as from the said date.

Provided that all such transactions made before the said date shall be treated as past and closed transactions and shall not be reopened.

.....

THE PROHIBITION OF RIBA ORDINANCE, 2001
AN INTRODUCTION

In pursuance of the verdict of the Supreme Court, the Task Force has drafted a new law for prohibition of Riba. In order to avoid any confusion, this Law is proposed to override any other law in vogue and debars all financial transactions involving Riba. While it does not affect the past or existing financial arrangements, foreign financial arrangements and past or pending cases, it puts a check, in all other cases, on prolongation of Riba in any form.

Moreover, this ordinance envisages constitution of a Shariah Board to, inter alia, guide the Federal Government, State Bank and SEC regarding Shariah aspects of financial arrangements and transactions and to ensure that these are not in conflict with the Injunctions of Islam. Specifying the functions of the Shariah Board the proposed ordinance authorizes the Federal Government to make rules, in consultation with the SBP and SEC to carry out the purposes of the Ordinance.

Considering that the Shariah complaint modes will keep coming up as an ongoing process and can form part of the schedule that could always be amended and modified, the Task Force has not included such provisions in the main body of the Seminal law.

AN
ORDINANCE

Eliminate riba in all its forms from financial and transactions in Pakistan.

WHEREAS it is expedient to eliminate *riba* as required under clause (f) article 38 of the constitution of Islamic Republic of Pakistan, and to amend all financial laws in conformity with the Injunctions of Islam.

WHEREAS the National Assembly and the Senate state suspended in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, and the provisional constitution Order No. 1 of 1999;

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

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

1. Short title, extent and commencement: (1) This Ordinance may be called the Prohibition of Riba Ordinance, 2001.

(2) It Extends to the whole of Pakistan.

(3) It Shall come into force from the first day of July, 2001¹.

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

(a) "Board" means the Shari'ah Board constituted under section 6;

¹ If in case of state borrowing, the Governments needs more time for implementing the provisions of this ordinance, the following may be added by substituting the full stop at the end of the sub-section 3 of section 1, namely:

" except the provisions of section ___ which shall come into force on such date as the Federal Government may, by notification in the Official Gazette, appoint. "

- (b) “court” means any court, tribunal or authority of original or appellate jurisdiction and includes an arbitration tribunal performing judicial or quasi-judicial functions;
- (c) “debt” means any amount relating to credit, loan, advance, finance and all other finance related pecuniary obligations, whether payable presently or in future, pursuant to an undertaking. Contractual arrangement or otherwise and includes any judgement debt or other liability pursuant to a decree or order of any court;
- (d) “effective date” means the date or dates specified in sub section 3 of section 1.
- (e) “existing financial arrangements” means the financial arrangements and transactions other than foreign financial arrangements entered into or undertaken prior to the effective date;
- (f) “foreign financial arrangements” means cross-border financial arrangements and transaction in which one of the parties is a foreign person;
- (g) “foreign person” means a foreign national, firm, company or any other association, body of persons, whether registered or not, a foreign government, agency, bank, financial institution, or fund, including international financial institutions or organizations but does not include any foreign firm, company, institution, juristic person or entity, financial institution or bank, doing business in Pakistan;
- (h) “Government financial arrangements” means financial arrangements or transactions in which Government is a party;
- (i) “Government” means the Federal Government or a Provincial Government and includes a Local Government or an authority of, or under the control of, the Federal Government or Provincial Government;

- (j) “interest” means any excess to be paid over and above an original obligation or liability whether the same is charged or sought to be recovered specifically by way of interest or otherwise, but does not include any profit or actual costs or expenses lawfully charged, or compensation or damages decreed or ordered by a court;
- (k) “law” means any Federal or provincial law or subsisting ordinance and includes any existing rule, regulation, principal policy, guideline, practice, procedure, precedent or any custom or usage having force of law but does not include the Constitution of the Islamic Republic of Pakistan;
- (l) “past financial arrangements” means past financial arrangements and transactions which came to an end or were closed prior to the commencement of this Ordinance;
- (m) “pending cases” means the cases instituted on or before the 30th June, 2001, and pending before the courts on that date;
- (n) “person” includes any individual, association or body of individuals, whether incorporated or not, including a firm, company, statutory body, Government, and any other legal entity;
- (o) “profit” includes any return, proceed or dividend which does not involve *riba*;
- (p) “*riba*” means interest or any amount or return over the principal in a contract of loan, debt or credit prohibited by the Holy Quran, whether such loan, debt or credit is taken for the purpose of consumption or for some production activity and includes: -

- (i) a transaction of money for money of the same denomination where the quantity on the both sides is not equal, either in a spot transaction or in a transaction based on deferred payment;
- (ii) a barter transaction between two weighable or measurable commodities of the same kind, where the quantity on both sides is not equal, or where the delivery from any one side is deferred; and
- (iii) a barter transaction between two different weighable or measurable commodities where delivery from one side is deferred:

Provided that it does not include profit, actual costs, expenses, services charges, fee and commission charged for services rendered by or on behalf of any person, banks and other institution

- (q) “Securities and Exchange commission means the securities and Exchange Commission of Pakistan established under the Securities and Exchange Act, 1997 (XLII of 1997); and
- (r) “State Bank” means the State Bank of Pakistan established under the State Bank of Pakistan Act, 1956 (XXXIII of 1956)

3. Ordinance to override other laws: -The provisions of this the Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force.

4. Prohibition of *Riba*: - (1) No person shall after the effective date, offer, accept, enter into any financial arrangement or engage in any financial transaction involving *riba*.

(2). No court shall pass any decree or order for the payment of *riba* in respect of any financial arrangement entered into or transaction undertaken on or after the effective date.

(3) Subject to the provision of this Ordinance, any contract, agreement document, instrument, memorandum or any written or verbal commitment which involves the payment, or receipt of, *riba* shall be void.

(4) This Ordinance shall not have retrospective effect and no right claim, demand or defence shall, directly or indirectly, be based thereon or entertained by any court pursuant thereto; and nothing contained in this Ordinance shall apply to past or

existing financial arrangements, foreign financial arrangements and past or pending cases.

(5) Nothing contained in sub-section (3) shall entitle any person including a bank or financial institution to renew, restructure or reschedule any existing financial arrangement which may entail prolongation of *riba* in any form.

(6) The provisions of this Ordinance do not prevent any persons under an existing financial arrangement to prepay his obligations thereunder without any prepayment penalty.

5. Continuance of existing and foreign financial arrangement: For removal of doubt, it is hereby declared that notwithstanding anything contained in the foregoing provision or a decision of any court; -

- (a) any existing financial arrangements made or undertaken or any debt incurred under any instrument, whether contractual or otherwise, or promise to pay or any other financial commitment, including made by, or on behalf of the government or a financial or statutory corporation or institution for making payment and all such obligations promises and commitments shall continue to remain valid binding and operative; and

- (b) the financial obligation incurred or which may be incurred and contract made before or after the commencement of this Ordinance between the Government or any financial institution, statutory corporation or any other institution and a foreign person shall continue to remain in force and all obligation, promises and commitments made thereunder shall be valid, binding and operative.

6. Shari'ah Board: (1) As soon may be, after the commencement of this Ordinance, the Federal Government shall, in consultation with the State Bank, constitute a Shari'ah Board comprising eminent Ulema and scholars well versed in Shari'ah and experts in law, economics accountancy, banking and finance to guide the Federal government, State Bank and Securities and Exchange Commission regarding Shari'ah aspect of financial arrangements and transaction to ensure that such arrangement and transactions are made or undertaken or proposed to be made or undertaken by any person, and every mode of finance investment, trade and business, are not in conflict with the injunctions of Islam as laid down in the Holy Quran and Sunnah.

- 2) The Federal Government shall appoint one of the members of the Shari'ah Board to be its Chairman.
- 3) The number of the members of the Board, including the Chairman, shall be seven and shall be appointed for a term of four year.

Provided that three of the members of the Board appointed for the first time shall, on commencement of this Ordinance, other than the Chairman, be chosen by drawing a lot and shall retire after the expiration of first two year.

- 4) The Chairman and members of the Board shall remain in office until their successors are appointed.
- 5) The members and Chairman of the Board shall be eligible for re-appointment.

- 6) In case the office of a member or Chairman falls vacant before the expiry of the term of four year for any reason, the Federal Government may, in consultation with the State Bank, appoint another person in his place for the remainder of the term of such member or Chairman, as the case may be.
- 7) For meeting of the Board, four members shall constitute the quorum.
- 8) No act proceeding of the Board shall be invalid merely on the ground of the existence of any vacancy in, or any defect in the constituting of the Board.
- 9) The proceeding of the Board shall be regulated by by-laws to be made by the Board.

7. Function of the Board: - In particular, and without prejudice to the generality of the responsibility of the Board referred to in sub-section (1) of the section 6, the Board shall: -

- (a) advise the Federal Government, State Bank and Securities and Exchange Commission on specific matters and references pertaining to the prohibition of *riba* and Islamic modes of financing;
- (b) assist the State Bank and Securities and Exchange Commission in overseeing and ensuring that all future financial arrangements and transactions are entered into or undertaken in conformity with the provisions of this Ordinance and do not involve *riba*; and
- (c) perform such other function as may be assigned by the Federal Government, State Bank or Securities and Exchange Commission for the purpose of securing the objects of this Ordinance.

8. Rules and regulation: - (1) The Federal Government may, in consultation with the State Bank and Securities and Exchange Commission, by notification in official Gazette make rule carry out the purposes of this Ordinance.

(2) The State Bank and Securities and Exchange Commission may, in their respective spheres of operation and in consultation with the Board make regulations, specifying the requirements for various modes of financing under Shari'ah either generally or in respect of specific classes of transactions

9. Removal of difficulties: - If any difficulty arises in giving effect to any provision of this Ordinance the Federal Government may in consultation with the State Bank and Securities and Exchange Commission issue such orders as may appear to be necessary for the purpose of removing the difficulty.

ISLAMIZATION OF FINANCIAL TRANSACTION ORDINANCE **2002 - AN INTRODUCTION**

In accordance with the directions of the Supreme Court and in order to realize the goal of a riba-free economy in the country the Task Force has drafted the Islamization of Financial Transaction Ordinance 2002. This law basically entitles the Federal Government to take steps to repeal laws or amend any provision thereof relating to payment of interest in any form it also requires the Federal Government State Bank of Pakistan and SEC to issue directions relating to Shariah Compliant modes of Financing and Investment, modify the modes of financing and require the adoption of such modes in respect of any person(s) or business or transaction as also to monitor to ensure compliance.

While identifying the Shariah Compliant Modes of Financing the Ordinance also specifies the consequences both in case of contravention or default in discharging obligations. Having an overriding effect it also authorizes the Government to make rules to carry out the purpose of this Ordinance and, in the context, the government may consult the SBP, SEC or the Shariah Board.

ISLAMIZATION OF FINANCIAL TRANSACTIONS
ORDINANCE 2002

(ORDINANCE NO OF 2002)

AN
ORDINANCE

To facilitate the elimination of *Riba* in all its forms from financial arrangement and to effect Islamization of financial transactions in Pakistan.

WHEREAS it is expedient to take such measures as may be necessary to restructure the economy on the basis of Islamic Injunctions as laid down in the Holy Quran and the Sunnah in pursuance of clause(f) of Article 38 of the Constitution of the Islamic Republic of Pakistan 1973 and to bring all financial laws and financial transactions in conformity with the injunctions of Islam.

AND WHEREAS the National Assembly and the Senate Stand suspended in pursuance of the proclamation of the fourteenth day of October, 1999 and the Provisional Constitutional Order No 1 of 1999;

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

NOW THEREFORE in pursuance of the Proclamation of Emergency of the fourteenth day of October 1999, and the Provisional Constitutional Order No 1 of 1999 as well as 9 of 1999 and in exercise of all powers enabling him in his behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:

PART-I PRELIMINARY

- (1) This Ordinance may be called the “Islamization of Financial Transactions Ordinance 2002”
- (2) It extends to the whole of Pakistan.
- (3) The provisions of this Ordinance shall come into force on 1st July 2002.

2. Definitions: - (1) In this Ordinance, unless there is anything repugnant in the subject or context. -

- (i) “**agent**” means a person authorized to do any act for another or to represent another in dealing with third person. The person for whom such act is done, or who is so represented, is called the “principal”
- (ii) “**Board**” means “Sharia Board” established under the Prohibition of Riba Ordinance 2002.
- (iii) “**Bayer**” means a person who buys or contracts to buy goods or services.
- (iv) “**court**” means any court of original or appellate jurisdiction and includes any tribunal arbitration tribunal established to perform judicial or quasi-judicial functions.
- (v) “**Debt or loan**” means any pecuniary obligation whether payable at present or in future, pursuant to an undertaking contractual arrangement or otherwise and includes any judgement debt or other liability pursuant to a decree or order of any court.
- (vi) “**delivery**” means physical or constructive transfer of possession from one person to another.
- (vii) “**gharar**” (دھوکہ) in the context of a contract of financial arrangement or transaction means such arrangement or transaction in which any of the following elements may be found:
 - (a) If there is such ambiguity or uncertainty with regard to goods or services, price, date or period for discharging the obligation in respect of the same as may put one of the parties to a disadvantageous position as compared to the other party;
 - (b) If the subject matter in a contract of sale is such as is not capable of being delivered at the time stipulated in the contract;
 - (c) If a contract is contingent upon a condition or event the happening or not happening of which cannot definitely be known to the parties.

- (viii) “**goods**” means any kind of moveable property other than actionable claims and money and includes electricity, water, gas, stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale under the contract of sale.
- (ix) “**government**” means the Federal Government or a Provincial Government and includes a local government or authority of our under the control of the Federal Government or a Provincial Government.
- (x) 10) “**ijarah** (اجاره) “(**leasing**)” means an arrangement whereby a person agrees to transfer the usufruct of a property to another person for a mutually agreed rent, terms and conditions while the ownership of the leased property remains vested in the lessor.
- (xi) “**interest**” means any excess to be paid over and above an original obligation or liability whether the same is charged or sought to be recovered specifically by way of interest or otherwise, but does not include any expenses or actual cost lawfully charged, or compensation or damages decreed by a court.
- (xii) 12) “**Istisna**” (), means a sale of goods to be manufactured, assembled, built, constructed or caused so to be done, at an agreed price in which the goods with

specifications are to be delivered at the specified feature date and place.

- (xiii) "**law**" means any Federal Provincial or subsisting ordinance and the include many existing rule, regulation, principal, policy, guidelines and practice, procedure, precedent or any custom or usage having the force of law but does not include the Constitution of the Islamic Republic of Pakistan.
- (xiv) "**mudarabah**" mean an arrangement in which a person participate with his money and other with his enterprise and / or expertise including bank, unit trusts, mutual funds, or any other person or institution, by whatever name called.
- (xv) "**murabahah**" means of sale of goods by a person to another under and arrangements whereby the seller is obliged to the disclose to the buyer the cost of goods sold and an agreed margin of profit included in the sale price of goods agreed to be sold, either on cash basis or on deferred payment basis.
- (xvi) 16) "**musawamah**" (مشارکہ) means a sell of good or services by a seller to a buyer at a price agreed upon at the time of sale, without any reference to the cost of goods or services sold.
- (xvii) "**musharakah**" mean of business relationships published under a contract by the mutual consent of the parties for sharing of profit and losses arising from a joint enterprise or venture.
- (xviii) "**past financial arrangements for transactions**" means financial arrangements or transaction that are past and were closed prior to the promulgation of this Ordinance.
- (xix) "**pending cases**" mean cases instituted on the before the 30th June 2002 and pending before the courts on that date.
- (xx) "**person**" includes any individual, association or body of individuals, whether incorporated or not, including a firm, company, statutory body, government, and any other legal entity.

- (xxi) "**price**" means the consideration by the way of money or goods or services for sale of goods or services as may be agreed upon and determined between a buyer and a seller at the time a contract of sale is made.
- (xxii) "**prescribed**" mean the prescribed by rule or regulations made by the Federal Government, the state bank of SEC, as the case may be.
- (xxiii) "**Riba**" means interest or any amount or return over the principal in a contract of loan, debit or credit prohibited by the Holy Quran, whether such loan, debt or credit is taken for the purpose of consumption or for some production activity and includes: -
- (a) A transaction of money for money of the same denomination where the quantity on both side is not equal, either in a spot transaction or in a transaction based on deferred payment;
 - (b) a barter transaction between two weighable or measurable commodities of the same kind, where the quantity on both side is not equal, or where the delivery from any one side is deferred; and
 - (c) a barter transaction between two different weighable or measurable commodities where delivery from one side is deferred.

Provided that it does not include profit, actual cost, expenses, services charges, fee and commissions charges for services rendered by or on behalf of any person, bank and other institutions.

Explanation (I) Interest or finance charge which is claimed, paid, given, receive, credited, debit - actually or through accrual - by any person including banks or other institutions, included Government, in their operations or on amounts outstanding either against them or for them is Riba.

Explanation (II) any charges, fees and commissions charged for services, rendered by or on behalf of any person, banks and other institutions are not Riba.

Explanation (III) Any premium or discount in relation to face value of a financial instrument representing debt in a transaction of issue, sale, purchase or transfer is Riba.

- (xiv) “**salam**” (سلم) (advance payment against deferred delivery) means a sale whereby the seller agrees to supply specified goods to a buyer by a future date in consideration of a price paid in advance at a time specified in the contract.
- (xv) “**SEC**” means the Securities and Exchange Commission of Pakistan established under the Securities and Exchange Commission of Pakistan Act, 1997.
- (xvi) “**Sharia-compliant**” in the context of a financial transaction, arrangement or agreement means a transaction, arrangement or agreement which conforms to the fundamental requirements and essentials of the Islamic Shariah in all material respects and does not involve or have any element of riba or gharar in any form as envisaged in Section 4.
- (xvii) “**specified goods**” means goods identified and agreed upon at the time a contract of sale is made.
- (xviii) “**State Bank**” means the State Bank of Pakistan under the State Bank of Pakistan Act, 1956.

PART-II- SHARIAH COMPLIANT MODES OF FINANCING

3. The Federal Government to repeal or amend laws etc: - (1) The Federal Government shall take necessary steps to repeal laws or amend any provision thereof relating to payment of interest in any form in order to bring all such laws in conformity with this Ordinance, and until the Federal Government so amends such laws or issues any decree, order or injunction in respect thereof, no court shall issues any decree, injunction or interim order which may involve any element of *Riba* or *Gharar* as defined in this Ordinance.

(2) The Federal Government or State Bank or SEC shall, from time to time, in consultation with the Shariah Board and consistent with the provisions of this Ordinance:

- i) issue directions relating to Shariah Compliant modes of financing and investment and the essential Shariah requirements thereof;
- ii) modify the modes of financing or the essential requirements thereof; or
- iii) require the adoption of one or more Shariah Compliant modes of financing in respect of any person or class of persons or any business or class of business or any transaction or class of transactions.

(3) The Federal Government, State Bank or SEC shall, in their respective reductions, monitor and ensure that all financial agreements and transactions are emerged into and undertaken in conformity with the provisions of this Ordinance.

4. Shariah-compliant modes of financing and investment: - (1) Any person including a bank or other institution may enter into any financial transaction or arrangement, by mutual consent in writing, with such specified terms and conditions as may be relevant and appropriate in any circumstances and be reduced to writing, by adopting any of the following Shariah-complaint modes of financing:

- a) *Musharakah*
- b) *Mudarabah*
- c) *Equity participation in a company*
- d) *Salam* (سلم)
- e) *Istisna* (استثناء)

- f) *Ijarah (Leasing)*
- g) *Murabahah*
- h) *Musawamah (مسأومه) or*
- i) such other modes which do not involve Riba or Gharar as defined in vii and xxiii of sub-Section (1) of Section 2 and which has not disallowed under this Ordinance.

(2). In the context of Ijarah (Leasing), the lessee shall be responsible and be liable for all risks and consequences in relation to third party liability, if any, arising from or incidental to operation or use of the assets leased out to such lessee.

PART-III - CONSEQUENCES OF CONTRAVENTION

5. Agreement held to be void or terminated: - (1) Any financial agreement or transaction, upon determination by the State Bank, on the advice of the Board, that involves;

- a) *Riba*, after the effective date; or
- b) an element of Gharar in any material respect;

shall, after giving the parties an opportunity of being heard be, in the case of clause (a) aforesaid deemed to be void ab-initio and in the case of clause (b) aforesaid be deemed to stand terminated from the date of such determination.

Provided that any party having availed or obtained any sum or pecuniary benefit under or in terms of any financial arrangement or transaction aforesaid with a bank or financial institution shall, notwithstanding such arrangement or transaction being void ab-initio or terminated, as the case may be, ipso facto become liable to repay or refund to the bank or financial institution concerned the outstanding or un-discharged sum of money together with any obligation to pay any amount as riba, if any, due or payable in terms of such arrangement;

Provided further that any riba due to or recovered by a bank or financial institution as aforesaid shall be transferred to Pakistan Baitul Mal.

6. Security: - It shall be lawful for a bank or a person or financial institution, in terms of an agreement for financial agreement or transaction under any of the Shariah-compliant mode of financial arrangement to transaction, to require the client to furnish such security in the form of pledge, hypothecation, lien, mortgage, or any other form of encumbrance on his assets as may be mutually agreed.

Provided however, that no person, the bank or financial institution as mortgage or the charge holder shall derive any financial benefit form security referred to above.

7. CONSEQUENCES OF DEFAULT IN DISCHARGING OBLIGATION:

- (1) Parties to any financial or business transaction or arrangement shall ensure

prompt and in-time payment of the dues and obligations payable by them under the agreement which shall provide for the payment of damages in case of any default.

(2) In a decree for the payment of money, the Court may, direct for the payment of liquidated damages equal to the amount agreed between the parties or, where no such damages were agreed, the Court may order the payment of such amount to decree holder as compensation as it may deem fit, being not less than ten percent of the amount of decree having regard to the circumstances of each case, including wilful default or otherwise.

(3) Where the judgement debtor fails to pay the decretal amount alongwith the damages or compensation payable under sub-section (2), the Court may, on the application of the decree holder, impose such penalty or fine as it may deem fit in addition to the amount payable.

under that sub-section and order for payment of a part of the penalty or the being not less than fifty percent thereof to the decree holder.

(4) Where the judgment debtor fails to comply with the order of the Court given under sub-section (3) within a period of ninety days, he shall be liable to simple imprisonment till the full and final payment of the decrial amount alongwith compensation or portion of the penalty or fine as the cause may be.

8. Ordinance to have Overriding Effect: - The provisions of this Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force:

Provided that the provisions of the Contract Act 1872 (IX of 1872), the Sale of Goods Act, 1930 (III of 1930), the Partnership Act 1932 (IX of 1932), the Companies Ordinance, 1984 (XLVII of 1984), the Banking Companies Ordinance, 1962 or any other law for the time being in force shall, insofar as

the provisions thereof are not inconsistent with the provisions of this Ordinance remain valid and continue to be in force and effective.

9. Indemnity: - No court shall entertain any application or suit challenging any action taken or act done in good faith by the Government or the State Bank or SEC under this Ordinance.

10. Rules and Regulations: - (1) The Federal Government may, in consultation with the State Bank, SEC and the Board, by notification in Official Gazette, make such rules, not inconsistent with the provisions of this Ordinance, as are necessary to carry out the purpose of this Ordinance.

(2) The State Bank or SEC may, in consultation with the Board, make such regulations, not inconsistent with the provisions of this Ordinance or the rules, as are necessary to carry out its functions this *Ordinance*.

11. Removal of difficulties: - If any difficulty arises in giving effect to any provision of this Ordinance, the Government may, in consultation with the State Bank, SEC and the Board, issue such order as may be necessary for the purpose of removing the difficulty.

RIBA ORIENTED REPEAL AND AMENDING ORDINANCE,
2002 - AN INTRODUCTION

The Task Force decided that instead of amending all the laws affected by the judgement separately, a comprehensive legislation be prepared to address the riba related provisions of all such Acts that were affected by the judgement of the Supreme Court. After through deliberations in several sessions the Task Force formulated its recommendations. The task of final drafting was entrusted to Justice Amjad Ali and the draft prepared by him was again discussed and approved by the Task Force. The Ordinance which is to be read with the Islamization of Financial Transaction Ordinance sets out the event of repeal and amendments to the following Acts:

1. The Land Acquisition Act, 1894 (I of 1894)
2. The Code of Civil Procedure (Act, V of 1908)
3. The Co-operative Societies Act, 1925 (Sin Act VII of 1925)
4. The Banking Companies Ordinance, 1962 (LVII of 1962)

AN ORDINANCE

To amend and repeal certain laws

WHEREAS it is expedient to amend and repeal certain laws for elimination of riba and for matters connected therewith and ancillary thereto;

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

NOW, THEREFORE, in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, the Provisional Constitutional No. 1 of 1999, in exercise of all powers enabling him in that behalf, the Chief Executive of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance.

1. Short title extent and commencement: - (1) This Ordinance may be called the Riba Oriented Repeal and Amending Ordinance, 2002.

(2) It shall extend to the whole of Pakistan.

(3) It shall come at force at once.

2. Amendment and Repeal Laws: - the laws specified in column (2) of the schedule below shall stand repealed or amended to the extent and in the manner specified in the column (3) thereof:

SCHEDULE

	Titles and numbers of the statues	Extent of repeal and amendments
	(2)	(3)

	<p>The Interest Act, 1939 (XXXII of 1939). The Government Saving Bank Act, 1873 (V of 1873)</p>	<p>The Act is hereby repeated In the said Act: - (1) In section 10, for the words “interest accrued thereon” the words “Shariah compliant return” shall be substituted and thereafter the following explanation shall be added, namely: - “Explanation: The Expression “<i>Shariah</i> compliant return” means any</p>
--	---	---

	<p>The Land Acquisition Act, 1894 (I of 1894).</p>	<p>return or profit through an investment or any other mode of investment or trading approved under the injunctions of Islam”.</p> <p>In the said act: -</p> <p>(1) In section 28 for the words “interest on such excess at the rate of six per centum per annum” the words “the rent of the land at the prevailing rate” shall be substituted;</p> <p>(2) in section 32, in sub-section (1), after clause (b), for the word “interest” the word “profit” shall be substituted;</p> <p>(3) in section 33,</p> <p>(a) for the words “an interest” the word “profit” shall be substituted; and</p> <p>(b) the word “interest” the word “profit” shall be substituted,</p> <p>(4) In section 34, -</p> <p>(a) for the words “with compound interest thereon at the rate of eight per centum per annum” the words “rental value as may be determined by him” shall be substituted; and</p> <p>(b) In the provision for the words “the said interest” the words “such rent” shall be substituted.</p> <p>In this said Code;</p> <p>(1) in section 2, in sub-section (12) for the words “interest on such profits” the words “such compensation as the court may determine shall be substituted;</p> <p>(2) for section 34 the following shall be substituted, namely:</p> <p>“34. Damages and compensation; (1) In a decree for the payment of money, the Court may direct for the payment of</p>
	<p>The Code of Civil Procedure (Act, V of 1908)</p>	

		<p>b) in sub-section (2) for the words and full stop “interest on the amount recovered at the rate if two percent above the prevailing bank rate “the words and a colon “such compensation as it may deem appropriate in the circumstances of the case “shall be substituted; and</p> <p>c) the explanation shall be omitted and thereafter the following provision shall be added, namely: -</p> <p>“Provided that the amount of compensation shall not be less than ten per cent of the principal amount”</p> <p>(4) section 34-B shall be omitted;</p> <p>(5) in section 35, sub-section (3) shall be omitted;</p> <p>(6) In section 73, in sub-section (1), in the provision in clause (c) in the third paragraph, the words “interest and principal money due on” shall be omitted;</p> <p>(7) in section 128, in sub-section (2), in clause (i) the commas the words “with or without interest” shall be omitted.</p> <p>(8) in section 144, in sub-section (1) the word “interest” shall be omitted</p> <p>(9) in the first schedule:</p> <p>a) in Order XX, rule 11, -</p> <p>(i) in sub-rule (1), for the words and commas, “with or without interest” shall be omitted, and</p> <p>(ii) in sub-rule (2), for the word “interest” the words and commas “damages, compensation, penalty or fine” shall be substituted;</p>
--	--	---

liquidated damages equal to the amount agreed between the parties or, where no such damages were agreed, the Court may order the payment of such amount to the decree holder as compensation as it may deem fit, being not less than ten percent of the amount of decree having regard to the circumstances of each case, including wilful default or otherwise.

(2) Where the judgment debtor fails to pay the decretal amount alongwith the damages or compensation payable under sub-section (1) the Court may, on the application of the decree holder, impose such penalty on __ as it may deem fit in addition to the amount payable under that sub-section and order for payment of a part of the penalty or the fine being not less than fifty percent thereof to the decree holder.

(3) Where the judgment debtor fails to comply with the order of the Court given under sub-section (2) within a period of ninety days, he shall be liable to simple imprisonment till the full and final payment of the decretal amount alongwith compensation or portion of the penalty or fine as the case may be,

(3) In section 34-A;

(a) In sub-section (1), -

(i) in the heading, for the words “interest on public dues” the words “Penalty for non-payment of public dues” shall be substituted; and

(ii) for the words “interest on such public dues at the rate of two percent above the prevailing banking rate the words “such sum as penalty as the court may deem appropriate in the circumstances of the case, which shall not be less than ten percent of the actual amount due” shall be substituted;

		<p>(b) in order XXI, -</p> <ul style="list-style-type: none"> (i) In rule 11, in sub-rule (2), in clause (g) the words, brackets and commas with interest (if any) shall be omitted (ii) In rule 38, the words “interest thereon” the words and commas “damages, compensation, penalty and fine” shall be substituted (iii) In rule 52, for the word “interest” the word “profit” shall be substituted. (iv) In rule 79 in sub-rule (3), for the word “interest” occurring twice the word “profit” shall be substituted; (v) In rule 80, in sub-rule (3), for the word “interest” the word “profit” shall be substituted. (vi) In rule 89, in sub-rule (3), for the word “interest” the word “profit” shall be substituted (vii) In rule 93, for the word “interest” the word “return” shall be substituted; <p>(c) in order XXIV, in rule 3</p> <ul style="list-style-type: none"> (i) In the heading for the word “interest” the word “Return” shall be substituted; and (ii) For the word “interest” the word “return” shall be substituted <p>(d) In order XXXIV</p> <ul style="list-style-type: none"> (i) In rule 2 <ul style="list-style-type: none"> (I). In sub rule (i), - <ul style="list-style-type: none"> (A). in clause (a), - <ul style="list-style-type: none"> (a) in sub clause (i), for the
--	--	---

		<p>words “principal and interest on the mortgage” the words “mortgage money” shall be substituted; and</p> <p>(b) In sub clause (iii) the comma and words “, together with interest thereon” shall be omitted; and</p> <p>(B). (B) in clause (c), -</p> <p>(a) in sub-clause (i) the words, figure and the comma “together with subsequent interest on such sums respectively as provided in rule 11,” shall be omitted; and</p> <p>(b) in sub-clause (ii), for the comma and words “expense and interest” the words and expenses: shall be substituted; and</p> <p>(II). in rule 2, in sub-rule (2) for the comma and words “, expenses and interest” the words “and expenses” shall be substituted.</p> <p>(ii) In rule 4, -</p> <p>(I) in sub-rule (1) for the comma and words “, expenses and interest” the words “and expenses” shall be substituted; and</p> <p>(II) in sub rule (2) for the comma word “, expenses and interest” the words “and expenses” shall be substituted;</p> <p>(iii) In rule 7;</p>
--	--	--

		<p>(I) In sub-rule (1);</p> <p>(A) In clause (a), -</p> <p>(a) In sub-clause (i) for the words principal and interest on the mortgage” the word “mortgage money” shall be substituted;</p> <p>(b) In sub-clause (ii), the word “and” shall be omitted;</p> <p>(c) in sub-clause (iii), the comma, words and semi colon “, together with interest thereon;” the semicolon and word “; and” shall be substituted; and</p> <p>(d) after sub-clause (iii), amended as aforesaid, the following new sub-clause shall be added namely: -</p> <p>“(iv) all gains accrued to the defendant from the mortgaged property during the mortgage period;”;</p> <p>(B) in clause (c)</p> <p>(a) in sub-clause (i), the words and figure “together with subsequent interest on such sums respectively as provided in rule 11” shall be omitted; and</p> <p>(b) in sub-clause (ii), for the comma and words “, expenses and interest” the words “and expenses” shall be substituted; and</p> <p>(II) In subrule (2), for the comma and words “, expenses and interest” the</p>
--	--	---

		<p>words “and expenses” shall be substituted;</p> <p>(iv) Rule 11 shall be omitted; and</p> <p>(v) Rule 13, in sub-rule (1), paragraph <i>thirdly</i> shall be omitted;</p> <p>(e) in order XXXVII, -</p> <p>(i) In rule 2 in sub-rule (2), -</p> <p>(I) after the word, colon and hyphen “decree: -”, the words, figure and full stop shall be added “for the principal sum due on the instrument as determined in accordance with section 34.”;</p> <p>(II) clauses (a), (b) and (c) shall be omitted.</p> <p>(f) in order XXXIX, in rule 9, in the second paragraph, for the words “interest thereon at such rate as the Court orders” the words “such penalty as the Court may determine” shall be substituted.</p>
	The Co-operative Societies Act, 1925. (Sind Act VII of 1925)	In the said Act, in section 59 in sub-section (2) in clause (e) the words interest or shall be omitted
	The Banking Companies Ordinance 1962 (LVII of 1962)	<p>In the said ordinance, in section 25, in sub-section (2), -</p> <p>(a) in clause (a), -</p> <p>(i) the word and comma “interest,” shall be omitted; and</p> <p>(ii) after the word “mark-up the words “as may be permissible in <i>shariah</i>” shall be added; and</p> <p>(b) in clause (b), for the word “interest” the word “markup” shall be substituted</p>

RECORD OF MEETINGS

In pursuance of the directions of the Shariat Appellate Bench of Supreme Court of Pakistan in the judgement in the Riba case, the component authority was pleased to constitute the Task Force, vide Law, Justice and Human Rights Division's Notification No, F.8(1)/99-LR, dated the 22nd January, 2000 consisting of: -

- | | | |
|----|---|-----------------------|
| 1. | Dr. Mahmood Ahmad Ghazi, the
then Member, National Security
Council | Chairman |
| 2. | Dr. Tariq Hassan, Advisor to the
Finance Minister | Member |
| 3. | Mr. Zafar Ali Khan, Deputy
Draftsman, Law & Justice Division | Member and |
| 4. | Mr. Zafar Hussain, Assistant
Draftsman | Member /
Secretary |

2. The first meeting of the Task Force was held on 4th February, 2000, which was attended by Chairman and all the three members of the Task Force, wherein it was decided that: -

- (a) The members of the Task Force shall meet twice a week
- (b) The Work of the Task Force will be spread over three phases and in the first phase the statues struck down by the supreme court shall be examined and the law to eliminate Riba shall be prepared;
- (c) The Task Force may invite experts of Shariah Law and a nominee of schedule/commercial banks to attend the meeting as casual members;
- (d) It was also decided to obtain supplementary grant to meet the necessary expenditure to the incurred for this purpose;

- (e) It was also agreed to hold a seminar on the subject and to invite scholars from various walks of life to participate in the seminar;
- (f) The Task Force mutually agreed to arrange/purchase a computer for the purpose of legislation and a photo-state machine for the use of Task Force work and other items, if need

3. The Second Meeting was held on 9th February, 2000 wherein the following laws were examined, which, being repugnant to injunction of Islam, shall cease to have effect from the 31st March, 2000, namely: -

- (1) The Interest Act, 1834
- (2) The West Pakistan Money-Lenders Ordinance, 1960.
- (3) The West Pakistan Money-Lenders Rules, 1965, 1960.
- (4) The Punjab Money-Lenders Ordinance, 1960.
- (5) The Sindh Money-Lenders Ordinance, 1960.
- (6) The NWFP Money-Lenders Ordinance, 1960.
- (7) The Balochistan Money-Lenders Ordinance, 1960.
- (8) Section 9 of banking Companies Ordinance, 1962.

4. The Member/Secretary of the Task Force was entrusted the job of preparing the repealing ordinance regarding the interest act, 1839, for discussion in the next meeting.

5. The third meeting of the Task Force was held on 18th February, 2000 and the Task Force re-examined the draft to amend section (9) of the banking companies ordinance, 1962, and on the suggestion of Dr. Tariq Hassan, Advisor to Finance Minister it was entrusted to him for further examination. The Chairman of the Task Force was please to take responsibility to prepare a model draft for the Money-Lenders Ordinance for substituting the existing Money lenders Ordinance, prepare

amending Ordinance regarding banking Companies Ordinance and also to prepare summary for the approval of the President.

6. The Fourth meeting of the Task Force was held on 29th February, 2000 and examined the draft ordinance, relating to the money lending, prepared by the Chairman. The Task Force decided to further examine the ordinance in the next meeting. The Member / Secretary placed the draft ordinance before the Task Force for consideration in order to repeal the Interest Act, 1839 and to amend the Banking Companies Ordinance 1962, alongwith the Summary for the President. The Members of the Task Force approved the aforesaid Ordinances and the Summary for the President.

7. The Task Force further examined Money-Lending Model Ordinance in its 5th, 6th and 7th meeting.

8. The said model law was unanimously approved by the Task Force for further submission to the Transformation Commission. After the approval of the Transformation Commission the model Money-Lending Law was sent to the concerned authorities by the Chairman of the Task Force.

9. The Task Force further examined the proposed amendments of section 21 and 24 of the House Building Finance Corporation Act, 1952 (XVII of 1952) and after careful examination, keeping in view the judgement of the apex Court and hearing representative of the Corporation the amendments were sent to the Transformation Commission. After the approval of the Commission the amending draft was prepared by the Member/Secretary and after approval of the Chairman the same was sent to the Finance Division.

10. In the meeting held on 27th June, 2000, the proposed draft legislation on Riba was discussed by the Task Force and the first reading of the draft Ordinance was completed. It was decided to further examine the Riba Ordinance in subsequent meetings.

11. In the course of discussion on Riba Ordinance careful thought was given to the existing internal, external and pending loans and it was decided that these should be exempted from the same unless some concrete suggestions were made as a substitute for the present contract system. The Riba Ordinance was sent to the Commission and the Member / Secretary of the Transformation Commission inform that during the last two meetings of Commission 90% consensus has been evolved in the context of the revised draft Riba Ordinance as prepared by the Task Force and that the Commission would be ready to give its final input within the next couple of days.

12. That the Task Force reconsidered the draft Ordinance in the light of observation of the Commission on Transformation particularly regarding composition or Shariah Advisory Board and it was decided that the final draft of Riba Ordinance would be placed before the Joint meeting of the Task Force and the Transformation Commission to reach consensus before its submission to the Government.

13. The Task Force also examined and finalized amendments proposed by the Council or Islamic Ideology to amend certain provisions of the Civil Procedure Code relating to interest.

14. The Task Force proposed Agenda for the next meeting as under:

- i) Confirmation of the minutes of the Task Force meeting held on 2nd December, 2001.

- ii) Consideration of Negotiable Instruments Act. 1881;
- iii) Consideration of any other Act with the permission of the Chairman.

MINUTES OF THE TASK FORCE MEETING HELD ON THE
13H JULY, 2000.

The meeting of the Task Force was held under the Chairmanship of Dr. Mahmood Ahmed Ghazi, Minister for Religious Affairs, Zakat and Ushr and was attended by all members to further examine Riba Ordinance and other items as provided in Agenda mentioned below: -

AGENDA

1. Preparation of the list of the experts / scholars to be invited from Pakistan and abroad to participate in the national and international seminars proposed by the Task Force to be held in Pakistan to consider and finalize the Prohibition of Riba Ordinance.
 2. Workout expenditure to be incurred in the holding of the Seminars.
 3. Formation of Committees to be assigned with responsibilities.
 4. Arrangement of equipment such as Computer, Fax-Machine and Photo-stat Machine.
2. The recommendations of the Commission for Transformation of Financial System, on House Building Finance Corporation were also included in Agenda.
3. The Task Force considered the amendments proposed by the Transformation Commission in the House Building Finance Corporation Act, 1952 and decided to propose only such amendments at this stage as are extremely necessary to implement the judgment of the Supreme Court. The Task Force recommended that the elaborate amendments proposed by the Commission should be considered after finalization and promulgation of Riba Ordinance which was presently under preparation.

4. The Task Force examined section 6 of the Riba Ordinance and proposed that for the word “approval” the word “consultation” should be substituted. It was further proposed that the payments of Riba or receipt thereof may not be made a panel offense at this stage as contemplated in section 8.

5. It was further decided that section 9 of the draft Riba Ordinance would be re-examined by Dr. S.M. Zaman, Chairman of the Council of the Islamic Ideology and Dr. Waqar Masood, Additional Secretary of Finance Division.

6. Items 1, 2 and 3 of the agenda were also deferred and it was proposed to hold joint meeting of the Task Force and the Commission to hold a seminar and decide on bearing of necessary expenses to be incurred in that respect.

7. Keeping in view, the financial position, the Chairman of the Task Force proposed that the seminar may be sponsored either by: -

- a. The Council of Islamic Ideology;
- b. The Commission for Transformation of Financial System;
- or
- c. The Task Force constituted in the Ministry of Law and Justice.

8. It was proposed that the seminar be held in three stages: -

Firstly:

The representatives of the Organizations involved in the financial transaction, such as the Ministries of Finance and Law, of the State Bank of Pakistan, the Security and Exchange Commission etc. may be invited to hold thorough consultation and detailed deliberations about the modalities and strategies to be followed after the enforcement of the Riba Ordinance.

Secondly:

The local scholars and experts may be invited to participate in a national seminar on Riba with a view to develop a national consensus on this issue.

Thirdly:

Scholars from other Muslim countries be invited to deliberate on the purpose law and to contribute in finalizing it.

The Chairman of the Council of the Islamic Ideology also proposed to hold meetings with Ulema and scholars on the subject to educate the public on this question.

**MINUTES OF THE TASK FORCE MEETING HELD ON THE 31
OCTOBER, 2000.**

A meeting of the Task Force was held in the Committee Room of the Law, Justice and Human Rights Division under the Chairmanship of Dr. Mahmood Ahmed Ghazi, Minister for religious affairs, Zakat and Ushr on 31st October 2000 at 1000 hrs. A list of participants is attached as Annexure – “A”.

2. Opening the discussion the Minister recalled the decisions taken in the last meeting of the Task Force regarding the re-drafting of an ordinance for elimination of Riba and to bring all financial laws in conformity with the injunctions of Islam as required under clause “F” of Article 38 of the constitution of the Islamic Republic of Pakistan 1973. The Minister informed the participants that he has further revised the draft. Copies of the same were circulated of the Members during the meeting. A view was expressed that in order to examine the contents of the ordinance threadbare, it appeared to be advisable to discuss the same further in the next meeting of the Task Force by which time the members would be in a position to examine and form their opinion about the same. The members, however, agreed to the option (ii) suggested against clause 8 of the ordinance.

3. The Chairman recounted the work so far undertaken by the Task Force and suggested that the remaining tasks should be prioritized before proceeding further. After necessary discussion on this score, it was decided that the following items would be taken up first for examination in the subsequent meetings: -
Code of Civil Procedure 1908

❖ Negotiable Instruments Act 1881

4. The following decisions were also taken during the meeting: -

- ✓ The next meeting of the Task Force will be held on Thursday, November 16, 2000 at 1000 hrs all the same place.
- ✓ A report on the action and follow up made so far in the respect of the laws examined by the Task Force will be prepared by the Secretary of the Task Force and placed before the next meeting.
- ✓ A set of minutes of the all previous meetings of the Task Force duly approved by the chairman will be supplied to every member of the Task Force before its next meeting. The current status of the previous recommendations of the

Task Force will also be ascertained and from different quarters and the members would be informed accordingly.

- ✓ A press release will be issued by the PRO of the Law, Justice and Human Resources Division at the end of each and everything of the Task Force incorporating all the important points covered as well as the benchmarks.
- ✓ The initial draft of each and every ordinance amended / drafted will be circulated to the members of the Task Force before it is sent to the Transformation Commission for further necessary action.

9. It was also agreed that the following will be the agenda for the last meeting of the Task Force:-

- i) Confirmation of minutes of the meeting held on 31-10-2000
- ii) Prioritization of the remaining work to be done by the Task Force
- iii) Consideration of:-
 - (a) code of Civil Procedure - 1908
 - (b) Negotiable instruments Act 1881.
- iv) Evaluation of the work already undertaken by The Task Force.

For this purpose of summary will be prepared by the member / secretary.

This meeting ended with a vote of thanks to the chair.

Recorded by:-

Syed Qamar Mustafa Shah,

Principle staff officers to the

Minister of Religious Affairs, Zakat and Ushr.

MINUTES OF THE TASK FORCE MEETING HELD ON THE
NOVEMBER, 16, 2000.

A meeting of the Task Force was held in the Committee room of the Law, Justice and Human Rights Division under the Chairmanship of Dr Mahmood Ahmed Ghazi. Minister for Religious Affairs, Zakat and Ushr on November 16, 2000 at 1000 hours. A list of participants is attached as Annex – “A”.

At the very outset, minutes of the earlier meeting of the Task Force held on November, 1, 2000 were confirmed by the Task Force. After confirmation of the minutes, other agenda items were taken up for discussions. However, add the instance of some members, consideration of the Draft Ordinance for Elimination of Riba was deferred to the next meeting.

Provisions of CPC hit by the judgment of the Supreme Court were taken up. Section 34 (1), 34 (II) and 34 a(1) 34 a(11) of the Code were considered. Several views were expressed with the objectives of covering the inflation impact on the capital of the aggrieved party. These included taking Gold and Silver as the basis for determining the amount of compensation to be paid-to the aggrieved party. It was, however, argued that due to frequent fluctuations of gold price in the international markets it would not be an appropriate solution.

It was also recommended that some strong provisions should be made to serve as deterrent for the culprit grabbers. The question of giving discretionary powers to the courts to determine the amount of fine or penalty to be imposed on the culprits / grabbers and the amount of compensation to be paid to the aggrieved party also came under discussion and it was decided that some mechanism should be worked out to facilitate the courts to justifiably determine such amounts. It was, unanimously decided that in case of willful default, there ought to be some penalty in addition to the compensation for the victim or aggrieved party and this penalty may be in the form of simple imprisonment.

After deliberations the following recommendations were formulated against the subject provisions of the code: -

- i. In a decree for the payment of money, the court may, in the decree, order the payment of liquidity damages equal to such amount and in such a manner as may have been provided in the agreement, and in case no such damages are

provided in the agreement, the court may order the payment of such amount to the decree holders by way of compensation as it may deem fit keeping in view the requirement of justice and equity.

- ii. Where the judgment debtor fails to pay the decretal amount along with the damages or compensation specified in sub section (I), the court may, on the application of the decree holder impose such penalty as it may deem fit in addition to the amount payable in sub section (I) and the may order that a part of the penalty or the fine imposed on the defaulter which shall not be less than 50% thereof, be paid to the degree holder.
- iii. If the judgment debtor fails to comply with the direction of the code under sub section (2) within a period of ninety days, he shall be deemed to be a willful defaulter and liable to simple imprisonment till the full and final payment and the discharge of the liabilities under-subsection (2).

The Chairman then desired that the Draft of the Riba Ordinance be discussed as agenda No. 1 in the next meeting of the Task Force. It was also decided that efforts should be made to obtain comments of the Transformation Commission to facilitate meaningful discussion on the same. Besides, a representative of the Transformation Commission preferably its members secretary, will also be invited henceforth to all the meetings of the Task Force and simultaneously the Transformation Commission may be requested to invite in future, a Member of the Task Force to every meeting of the Commission, preferably its Member-Secretary to facilitate greater coordination and to ensure consolidation of the work done both by the Task Force as well as Transformation Commission.

The meeting was informed that the draft of the Riba ordinance had somehow found its way to unauthorized elements. While expressing concern over this mishap the meeting decided that all the relevant quarters would be asked to exercise greater care and caution while dealing with such draft prepared by the Task Force and should ensure that no document or any component thereof be allowed to be either released to the Press or fall into wrong hands.

It was decided that the next meeting of the Task Force would be convened on Thursday, 7 December, 2000 in the Committee Room of the council of Islamic Ideology. It was also decided that the Director General (Research), Council of Islamic Ideology would prefer draft amendments in the Sections of the CPC and the negotiable instruments Act in the light of the formula adopted for Section 34(1) and

34(11) and CPC for the perusal and consideration of the Task Force in its meeting on 7 December, 2000. The next paper produced by Mrs. N. H. Nigar in the context of sections 34(1)(2) and 34 a(1)(11) etc. 1908, and section 79 and 80 of negotiable instrument act, 1081 will also be circulated to the members of the Task Force.

The Agenda for the next meeting was approved as under: -

- (i) Confirmation of minutes of the meetings of the Task Force held on November 16, 2000;
- (ii) Consideration of the Draft Ordinance for Elimination of Riba;
- (iii) Consideration of the remaining portion of the Code of Civil Procedure 1908;
- (iv) Consideration of Negotiable instruments Act 1881.

The meeting ended with a vote of thanks to the chair.

Recorded by:

Syed Qamar Mustafa Shah
Principle Staff Officer to the
Minister for Religious Affairs, Zakat and Ushr

**MINUTES OF THE TASK FORCE MEETING HELD ON THE
DECEMBER 12, 2000**

A meeting of the Task Force was held in the Committee room of the Law, Justice and Human Rights Division under the Chairmanship of Dr. Mahmood Ghazi, Minister for Religious Affairs, Zakat and Ushr on December 12, 2000 at 1000 hours. A list of participants is attached as Annex- "A"

2. Welcoming the participants the Chairman especially thanked Mr. M. Ashraf Janjua, Member/Secretary of the Commission for Transformation of Financial System, State Bank of Pakistan, Karachi for his participation and expressed the hope that the latter's presence in the meetings of the Task Force will prove to be useful for better coordination between the Task Force and the Transformation Commission and a faster consolidation of the work done on both the forums. Minutes of the last meeting were then confirmed by the meeting.

3. Recalling the decision of the last meeting, the Chairman invited the views of the participants on the proposed Draft Ordinance for the Elimination of Riba and the annotated comments prepared by the Council of Islamic Ideology on the sections struck down by the Supreme Court in CPC and the Negotiable Instruments Act-1881. The draft amendments proposed by Mrs. N.H Nigar in the context of Sections 34(1)(2) and 34 a(1)(2) etc. in CPC 1908 and section 79 & 80 of Negotiable Instruments Act, 1881 were Also taken into consideration.

4. Dr. Tariq Hassan, Member of the Task Force presented a modified draft Ordinance on Riba incorporating largely some drafting changes and a couple of conceptual amendments. He also briefed the meeting on the changes proposed by him. The member/Secretary of the Transformation Commission informed that during the last two meetings of the Commission 90% consensus has been evolved in the context of the revised draft Riba Ordinance as prepared by the Task Force and that the Commission would be ready to give its final input within the next couple of days. The Chairman remarked that any document submitted to the Government would only be such as should embody the consensus reached between the Task Force and the Transformation Commission. It was proposed that a joint meeting of the Task Force and the Transformation Commission should be held in near future to consider and discuss final draft of the Riba Ordinance prepared to conclusively decide to the version to be submitted to the Government.

5. In the course of discussion on Riba Ordinance a view was expressed that while foreign loans have already been recommended to be outside the purview of the Riba Ordinance, the existing internal external and pending loans should also be exempted from the same unless some concrete suggestions are made as substitute for the present contract system. Sharing these views, the Member/Secretary of the Transformation Commission stated that in the Commission also there was a near consensus on protecting the past contracts. However, the date from which the new arrangements under the Riba ordinance should take effect is still being deliberated upon. About including the existing domestic loans in the purview of the prohibition of Riba Ordinance, some members expressed strong reservations and warned that since atmosphere was not conducive for such an abrupt change the whole market may face chaos and the economic activity may decelerate. The Chairman, however, remarked that notwithstanding these considerations the decision of the Shariat Appellate Bench of the Supreme Court will be effect on 30 June, 2001 and the vacuum created due to it will have to be filled up by making concredited efforts to work out an effective alternative.

6. The nature of the functions the status and the role proposed to be assigned to the Shariah supervisory Board to be established in the State Bank of Pakistan under the Riba Ordinance also came under discussion. Several views were expressed as to the scope of the board and whether it should be made mandatory for the State Bank of Pakistan to implement its recommendations on all issues needing clarifications on being in conformity with the Shariah or to make the State Bank of Pakistan responsible to exercise as traditional regulatory authority even in areas relevant to Shariah. In the latter situation, it was suggested, the State Bank of Pakistan should be made to explain to the board the reasons for not following some of its recommendations. A question was raised as to the course of action in the event of difference of opinion between the state bank of Pakistan and the board as it could lead to conflict and mismanagement. Identifying the cause in which such conflict may take place, some members referred to the recently floated bonds by the Government. It was mentioned that this question was agitated by the Transformation Commission as well for being at variance with the decision of the supreme court. It was pointed out that the Transformation Commission was asked to proposed any acceptable alternative for the Government to raise some more loans but the same had not yet been suggested. It was finally decided to stick to the scope of the shariah

supervisory board as specified in the draft Riba Ordinance as the other course would be too risky and may create uncertainties that may lead to confusion.

7. Afterwards, the relevant provisions of the CPC were again taken up for discussion. After a thorough review, it was decided that instead of individually amending the large number of sections hit by the judgement of the Supreme Court, a substantive provision should be drafted on the lines of the draft the Text produced by Mrs. Nigar and the draft prepared by the Adviser for consideration in the next meeting of the Task Force.

8. The members/Secretary of the Transformation Commission stated that they would invite the Chairman of the Task Force to the next meeting of the Commission.

9. It was also decided that the next meeting of the Task Force would be held on Thursday, 21 December, 2000 at 1000 hours in the committee room of the Ministry of Law, Justice and Human Rights with the following agenda: -

- i. Confirmation of minutes of the meeting of the Task Force held on December, 12, 2000.
- ii. Reconsideration of the Draft Ordinance for Elimination of Riba alone with observations of the of the Transformation Commission; and
- iii. Consideration of the seminal provision to be drafted, to fill the void that would be created in the Code of Civil Procedure, 1908 and the Negotiable Instruments Act, 1881.

10. The meeting ended with a vote thanks to the chair

Recorded by. Syed Qamar Mustafa Shah,
Principal Staff officer to the
Ministry for Religious Affairs,
Zakat and Ushr

MINUTES OF THE TASK FORCE MEETING HELD ON THE
DECEMBER 23, 2000

A meeting of the Task Force was held in the Committee Room of the law, Justice and Human rights Division under the Chairmanship of Dr. Mahmood Ghazi, Minister for Religious Affairs, Zakat and Ushr and Chairman of the Task Force on 23, December, 2000 at 1000 hrs. A list participants is attached as Annex- "A".

2. No Comments were received on the minutes of the meeting of Task Force held on 12 December, 2000 which were circulated to the participants.

3. The draft Riba Ordinance was taken up for consideration in the light of the observations of the Commission on the Transformation of the Financial System. Some further Amendments were made in the Draft. The chairman as well as certain other members retained a copy of the Ordinance for further consideration in their individual capacity and exchange of ideas/ proposals particularly in the context of the composition of the Sharia Advisory Board Which is required to be constituted in the State Bank of Pakistan. It was decided that the final Draft of the Riba Ordinance would be placed before the joint meeting of the Task Force and the Transformation Commission to reach a consensus before its submission to the Government.

4. It was agreed that after completion of the reading and successfully amending the Civil of Procedure Code 1908 the next meeting of the Task Force would take up "Negotiable Instruments Act 1881" alongwith some other Acts for consideration in the next meeting.

5. The member/Secretary of the Task Force informed the meeting that the Task Force was being constituted and a new person would soon assume the position of the Member/Secretary. It was, therefore, decided that the next meeting of the Task Force would be convened after the ministry of law, Justice and Human Rights notified the revised composition of the Task Force.

6. The chairman and the members thanked the Member/Secretary for the services rendered by him for the Task Force and Expressed the Hope that his expertise would remain available to the Task Force.

7. Agenda for the next meeting of the Task Force will be as follows: -

- i. Confirmation of the minutes of the Task Force meeting held on 23rd December, 2021;
 - ii. Approval of the final draft of the Ordinance for elimination of Riba.
 - iii. Consideration of Negotiable Instruments Act-1881;
 - iv. Consideration of any other Act with the permission of the chairman.
8. The meeting ended with a vote of thanks to the chair.

-.-.-

Recorded by: Syed Qamar Mustafa Shah
Principal Staff officer to the
Ministry for Religious Affairs
Zakat and Ushr

**MINUTES OF THE MEETING OF THE TASK FORCE HELD
ON THE 3RD APRIL, 2000**

A meeting of the Task Force was held on 3rd April, 2001 at 10:00 A.M in the committee room of the Law, Justice and Human Rights Division under the Chairmanship of Dr. Mahmood Ahmad Ghazi, Minister for Religious Affairs, Zakat and Ushr. The meeting was attended by the following: -

- | | | |
|----|--------------------------|------------------|
| 1. | Dr. Mahmood Ahmad Ghazi | Chairman |
| 2. | Dr. Tariq Hassan | Vice Chairman |
| 3. | Dr. S. M. Zaman | Member |
| 4. | Justice (Retd) Amjad Ali | Member |
| 5. | Mrs. Naeem Hussain Nigar | Member |
| 6. | Mr. Abdul Rehman Qureshi | Member |
| 7. | Mr. Ali Munir | Member |
| 8. | Ch. Muhammad Younis | Member/Secretary |

2. No comments were received on the minuted of the meeting of the Task Force held on 23-12-2000 which were circulated to the members,

3. The meeting commenced with the recitation of the holy quran by the worthy Chairman. As the Task Force had been reconstituted so the Chairman welcome the new members and apprised them briefly of the work done by the Task Force so far.

4. As per Agenda of the meeting. Prohibition of Riba Ordinance 2001 Was to be Discussed but a few days before the meeting the First Working Draft of Islamization of Financial Transactions Ordinance, 2001 drafted by Mr. Ebrahim Sidat. Member of the Commission for Transformation of FInnancial System was sent to the Chairman, Task Force for consideration and it was circulated to the Members of the Task Force. So this Draft Ordinance was brought under discussion. During the discussion the Task Force was of the view that in order to convey an effective message to the masses the name of the Ordinanace should be "Prohibition of Riba and Islamization Of financial Transaction Ordinance." Detailed discussion was held on Section 2 of the Draft Ordinance containing definitions. Regarding establishment of Shariah Board Dr. Tariq Hasan expressed his view-point as under:-

“It would not be appropriate to empower the Shariah Board to perform any legislative or adjudicative functions, whether directly or indirectly. The role of the Shariah Board should be limited to administrative matters only and that too to the extent of rendering advice on policy matters such as assisting the State bank to prescribe Islamic modes of financing. Consequently, the Shariah Board should not be entrusted with the task of rendering advice on individual transactions or enforcing the Prohibition of Riba Ordinance to maintain regulatory autonomy of and to avoid any conflict with the State bank.

He rather questioned the need for establishing a statutory Shariah Board, The SCP Order envisages an internal department within the SBP which can be established through an administrative order. The concept of a management level Shariah Board was basically introduced and deemed necessary by private Islamic banks operating in a non-Islamic legal framework. The transformation of the financial system into an Islamic based system under a national regime by the Government of Pakistan would obviate the establishment of a Shariah Board. However, in case it is still considered desirable for whatever reason to establish a statutory Shariah Board, then it is imperative to clearly identify the nature and role of this body and to ensure that only those persons who are properly qualified in Shariah are nominated to the Board. It is also important to outline the principles and guidelines of financing under Shariah in the proposed law to ensure transparency and uniformity of decision making by the Shariah board.”

5. The definitions of ‘Agent’, ‘Buyer’, ‘Coercion’, ‘Companies’, ‘Consent’, ‘Fraud’, ‘Goods’, ‘Guarantee’, ‘Misrepresentation’, and ‘Price’ already existed in various statutes such as Sales of Goods Act, Contract Act and Companies Ordinance 1984 etc. and the Task Force was of the view that these need not be inserted in the proposed Draft Ordinance as it would only make the Ordinance voluminous without serving any good purpose.

6. After detailed decision the Task Force completed its consideration up to section 6 of the Draft Ordinance and it was felt that the consideration of this lengthy Draft Ordinance could not be completed within such a short time and after due deliberations the Task Force was of the view that the Draft Ordinance required a lot of modifications and improvements before the same was finalized. The Chairman and the members of the Task Force were of the view that the Draft

Ordinance deviated from the original consensus developed by the Transformation Commission and the Task Force about the Draft prohibition of Riba Ordinance. The principles of Islamic financial transactions should be incorporated in a separate law to be drafted with utmost care. The alternative means and Shariah instruments as mentioned in the draft amount to restrict the freedom of business community and the private sector. The Task Force expressed the viewpoint that the Shariah compliant modes may not be incorporated in the body of the law itself. The same may be notified from time to time by the Government of Pakistan/SEC and State Bank of Pakistan in consultation with the Shariah Board. So there was the consensus among, the members of the Task Force on the point that the seminal law should not be overburdened with such minute details as given in the schedule A to D of the Draft Ordinance.

7. After detailed decision the Task Force resolved that it should finalize in the next meeting, the Draft Prohibition of Riba Ordinance in the light of the amendments proposed by the Commission for Transformation of Financial system in their meeting held on 13th and 14th March, 2000. The Secretary of the Task Force was directed to prepare draught of the prohibition of river Ordinance after incorporating the recommendations proposed by the Commission for Transformation and to circulate the Draft Ordinance to the Members to be discussed in the next meeting to be held on 12th and 13th April, 2001. The Chairman and Members of the Task Force appreciated the valuable contribution of justice (Retd) Amjad Alt for his suggestions from drafting point of view.

8. The meeting ended with a vote of thanks to the chair.

**MINUTES OF THE MEETING OF THE TASK FORCE HELD
ON 20 APRIL 20021**

The meeting of the Task Force was held on 20th April 2001 at 9.00 A.M. in the Committee Room of the Law, Justice and Human Rights Division under the Chairmanship of Dr Mahmood Ahmed Ghazi, Minister for Religious Affairs, Zakat and Ushr. The meeting was attended by the following:-

1.	Dr. Mahmood Ahmed Ghazi	Chairman
2.	Dr. Tariq Hasan	Vice Chairman
3.	Dr. S.M. Zaman	Member
4.	Justice (Retd) Amjad Ali	Member
5.	Mrs. Naeem Hussain Nigar	Member
6.	Mr. Abdul Rahman Qureshi	Member
7.	Mr. Ali Munir	Member
8.	Dr. Ghulam Murtuza Azad	By invitation
9.	Mr. Fida Hussain	By invitation
10.	Mr. Nasier A. Sheikh	By invitation
11.	Mr. Salamatullah	By invitation
12.	Syed Qamar Mustafa Shah	PSO to Chairman
13.	Ch. Muhammad Younus	Member/Secretary

2. No comments were received on the minutes of the meeting of the Task Force held on 3rd April, 2001 which were circulated to the Members.

3. The meeting commenced with the recitation from the Holy Quran by Syed Qamar Mustafa Shah. Principal Staff Officer to the Chairman, Task Force. The Chairman apprised the member that after the previous meeting of the Task Force he had written a letter to the Chairman, Commission for Transformation of Financial System, State Bank of Pakistan, Karachi to the effect that the Task Force had deliberated on the Draft "Islamization of Financial Transactions Ordinance, 2001" prepared by Mr Ebrahim Sidat, Member of the Transformation Commission and it was found that it required a lot of thinking and re-thinking before the same is finalized as it deviated from the original consensus developed by the Commission and the Task Force that the first draught should be confined strictly to the prohibition of Riba whereas the principles of the Islamic financial transaction should be

incorporated in a subsequent law to be drafted with utmost care and vigilance. The Chairman emphasized that at this stage we should concentrate on the prohibition of Riba as suggested in the original draft of the Task Force (amended and modified by the Commission and the Task Force).

4. The Task Force started discussion on the draft Prohibition of Riba Ordinance. Although the Transformation Commission has suggested the name of the ordinance as “Islamization of Financial Transactions Ordinance 2001” but the the Task Force had consensus on the point that on order to convey an effective message to the masses in connection with the elimination of Riba the ordinance may be called the “Prohibition of Riba Ordinance 2001”, section 1 of sub-section (3) was slightly amended. In section 2 (a) in the definition of “court” the “authority” was also included. Justice (Retd) Amjad Ali suggested the amendment in the definition of “debt” which was adopted. After detailed discussion profit was also proposed to be included in the definition of “interest” in Section 1(I) Justice (Retd) Amjad Ali proposed amendment in the definition of “Riba” which was adopted. After detailed discussion Dr. S.M. Zaman proposed that in section 6(2) (a) and (b) as previously existed in our draft “Prohibition of Riba Ordinance” may be retained instead of adopting the modified version of the Transformation Commission. Clause (d) of section 6(2) was considered to be unnecessary by the participants/ members of the Task Force was proposed to be deleted. Regarding appointment of the chairman of Sharia Board, Dr. Tariq Hassan was of the view that it should be substituted by chairperson so that a woman could also be appointed as chairperson but Mr. Naeem Hussain Nigar expressed her view that the word “Chairman” was appropriated and expedient. The remaning sections of the draft Ordinance was also discussed at considerable length and justice (Retd) Amjad Ali was requested by the chairman of the Task Force to prepare the Draft Ordinance after incorporating the amendments proposed in the meeting.

5. After the end it was decided to finalize the Draft Prohibition of Riba Ordinance in the next meeting and the extracts from Government Savings Banks Act, Negotiable Instruments Act, Land Acquisition Act, Civil Procedure Code and the other laws alongwith the suggested amendments were circulated to the members to be discussed in the next meeting to be held on 2-5-2001.

The meeting ended with a vote of thanks to the chairman.

Prepared by:

Ch.Mohammad Younus.
Member/ Secretary, Task Force

Approved by:

Dr. Mahmood Ahmed Ghazi
Minister of Religious Affairs, Zakat
and Ushr

MINUTES OF THE MEETING OF THE TASK FORCE HELD
ON 2-5-2001

The meeting of the Task Force was held on 2nd May, 2001 at 9:30 A.M. in the Committee Room of the Law, Justice and Human Rights Division under the Chairmanship of Dr. Mahmood Ahmed Ghazi, Minister for Religious Affairs, Zakat and Ushr. The meeting was attended by the following: -

1.	Dr. Mahmood Ahmed Ghazi	Chairman
2.	Dr. Tariq Hasan	Vice Chairman
3.	Dr. S.M. Zaman	Member
4.	Justice (Retd) Amjad Ali	Member
5.	Mr. Abdul Rahman Qureshi	Member
6.	Mr. Ali Munir	Member
7.	Dr. Ghulam Murtuza Azad	By invitation
8.	Dr. Waqar Masood	By invitation
9.	Mr. Nasier A. Sheikh	By invitation
10.	Mr. Salamatullah	By invitation
11.	Syed Qamar Mustafa Shah	PSO to Chairman
12.	Ch. Muhammad Younus	Member/Secretary

2. Mrs. Naeem Hussain Nigar could not come from Karachi due to some pre-occupation. The meeting commenced with the recitation from the Holy Quran by Dr Mahmood Ahmed Ghazi Chairman Task Force.

3. The Task Force started the final review of the draft Prohibition of Riba Ordinance 2001 in the light of the recommendations of the Task Force incorporated therein during the previous meeting dated 20-4-2001. Minor amendments were proposed in the section 2 (a) (e) (f) and (i).

4. As [required] the definition of "Riba" Dr Tariq Hasan was of the view that the definition as given by the Supreme Court of Pakistan was not exhaustive. He further pointed out that the supreme court of Pakistan has not dealt with the issue of Indexation and inflation in the operative part the Judgment through there is sporadic discussion on this topic in the remaining part of the judgment. He further commented that the following concluding remarks of the supreme court of Pakistan are noteworthy in this regard:

“But we feel that this question needs a more thorough research which before its final decision in this court should first be initiative by different study circles of the country, especially/ by the Council of Islamic Ideology and the Commission for the Islamization of Economy. Many international seminars have been held to deliberate on this issue. The papers and resolutions of these Seminars should be analyzed in depth.

On the other hand, having held that this question does either justify interest nor provides a substitute for it in the banking transactions, we do not have to resolve this issue in this case, nor does the decision about the laws under challenge depend on it, therefore, leave the question open for further study and research.”

5. Dr. Waqar Masood, Additional Secretary, Finance Division contended that sub-clauses (iv) and (v) of section 2(o) are unnecessary and should be deleted. After detailed discussion the participants agreed to the deletion of the same. To remove any kind of ambiguity the definition of foreign person was recommended to be included in section 2. Justice (Retd.) Amjad Ali suggested to include a new Section regarding fulfilment and continuance of existing and international financial obligations for removal of any doubt. the proposed section was adopted and it was decided to be incorporated in the draft Ordinance as Section 5. Minor amendments were proposed in Section 6 which deals with Shari’ah Board and the members unanimously resolved that their Shari’ah Board should comprise not only Ulemas and scholars well-versed in Shariah but also expert in law, economics, accountancy, banking and finances. Dr. Waqar Masood proposed that the number of the members of the board including the chairman should be seven instead five and three of the members of the Board appointed for the first time on commencement of this Ordinance other than their chairman should retire after expiry of a period of two years by drawing a lot. Sub section (7) and (8) relating to quorum of the board and effect of existence of any vacancy were supposed to be added. A new sub-section (9) relating to the proceeding of the Board being regulated by by-laws was also added. Slight amendments and corrections were made in section 7.

6. Lengthy discussion took place with regard to the proposed section 8 of the Ordinance. Dr. Waqar Masood was of the view that Islam has not especially provided any punishment in relation to Riba- based transactions. So this section was unnecessary and the penalty, if any could be provided under the other relevant laws.

After a long discussion, section 8 was proposed to be deleted. The Task Force after due deliberation also resolved to delete section 9 concerning indemnity. Sub-section (1) and (4) of section 10 of the draft.

MINUTES OF THE MEETING OF THE TASK FORCE HELD
ON 22-5-2001

A meeting of the Task Force was held on 22 May, 2001 at 09:30 A.M. in the Committee Room of the Law, Justice and Human Rights Division under the Chairmanship of Dr. Mahmood Ahmed Ghazi, Minister for Religious Affairs, Zakat and Ushr. The meeting was attended by the following: -

1.	Dr. Mahmood Ahmed Ghazi	Chairman
2.	Dr. S-M. Zaman	Vice Chairman
3.	Dr. Tariq Hasan	Member
4.	Justice (Retd) Amjad Ali	Member
5.	Mr. Abdul Rahman Qureshi	Member
6.	Mr. Ali Munir	Member
7.	Dr. Ghulam Murtuza Azad	By invitation
8.	Dr. Waqar Masood	By invitation
9.	Mr. Nasier A. Sheikh	By invitation
10.	Mr. Salamatullah	By invitation
11.	Syed Qamar Mustafa Shah	PSO to Chairman
12.	Ch. Muhammad Younis	Member/Secretary

2. The meeting commenced with the recitation from The Holy Quran by Dr. Mahmood Ahmed Ghazi, Chairman, Task Force.

3. The Task Force started the final review of the draft Prohibition of Riba Ordinance 2001 in the light of the recommendations of the Task Force incorporated therein during the previous meetings.

4. In Section 2(b) minor amendments were made so as to include ‘authority and ‘arbitration tribunal* also in the definition of “court”. In clause(d) of Section 2 it was decided not to repeat that date which has already been specified in Section 1(3). So the effective date was deemed to be the date specified in Sub-section(3) of Section 1. On the suggestion of Mr. Ali Munir in clause(1) of Section 1 in the

definition of 'Foreign financial arrangements' the word "cross border" were added to make it more comprehensive. In clause(g) Section 1 the Chairman suggested that the last portion of the sentence i.e. "operating or doing business in Pakistan". Majority share holding of which is owned or controlled, directly, indirectly or beneficially by the nationals of Pakistan is unnecessary and should be deleted. Dr. S-M. Zaman also supported the suggestion whereas Mr, Ali Munir was of the view that it should be retained. After detailed discussion it was resolved to delete the said portion of the sentence considering it unnecessary. The order of the sentence was also a bit changed. The footnote of page 2 to was deleted.

5. Mr. Ali Munir remarked that the definition of Riba was given in Section 2(p) of the proposed draft Ordinance is not comprehensive. He has sent the following note for incorporating the same in the minutes;

“Careful reading of the definition of Riba in the draft “Prohibition of Riba Ordinance” appears to provide partial coverage to the asset side of the balance sheet of any Financial Institution i.e. prohibition Riba on loans, advances and other forms of extension of credit only. The remaining portion of the asset side and more importantly the liability side i.e. investments, deposits, borrowings and such sources of funds on which interest (Riba) is paid or payable is absent from the definition.

It is pertinent to point out that on raising this issue in the Committee meeting held on 22nd May, 2001, a member observed that deposits i.e. sources of funds are covered which to my mind is implicit in nature, if at all.

I, therefore, wish to record my concern in the minutes of this meeting that the above assumption given the present definition of Riba is open to different interpretation, potential disputes and shall result in operational problems to Financial Institutions as prohibition of Riba which taking away the right to charge or pay interest creates other legal rights i.e. to charge bona-fide expenses and profit on products offered by institution whether these are asset based or liability based.

In view of above, I strongly recommend that the definition of Riba is suitably amended to categorically state that interest on liability based products i.e deposits, investments etc. as stated above stands prohibited by virtue of this ordinance”

2. Mr. Salamatullah and Nasier A. Sheikh were of the view that the definition covers both the aspects and clause (p) needs to Dr. Tariq Hassan and the other members were of the view that this definition has been given by the Supreme Court of Pakistan in the judgment and the same has been adopted which should not be altered as it covers both aspects of Riba. Mrs. Naeem Hussain Nigar maintained that detailed discussion has already taken place on this clause in the previous meetings and it needs not be reopened having already been finalized, the words “or any other manner” were unnecessary. After some discussion in this respect the Task Force resolved to delete the said words being unnecessary. In the title of Section 5 the words "international financial transactions" were decided to be substituted by "foreign financial arrangements" to make it more meaningful. In section 6(1) which deals with Shariah Board the word 'immediately' was suggested to be deleted. The Task Force resolved to delete the said word being unnecessary. Mr. Abdul Rehman Qureshi was of the view that in section 6(3) instead of inserting the Proviso a new sub-section should be added but the other members of the Task Force were of the view that the said section is quite comprehensive and need not be modified or amended.

8. Dr. Waqar Masood was of the view that in Section 8 (2) the last portion of the sentence after the words “Federal Government” was unnecessary but the Chairman explained that in order to determine the areas in respect of which the regulation could be made it was necessary to retain the said portion. Mr. Justice (Retd) Amjad Ali maintained that the said portion collaborates with the provision and should be retained. The Task Force after detailed discussion deleted the words ‘not inconsistent with the provision of this Ordinance or the rules made by the Federal Government’. Dr. Tariq Hassan and Mr. Ali Munir maintained that the last portion of Section 8 (2) i.e. ‘and to ensure that all financial arrangements and transactions are entered into and undertaken in conformity with the provision of this Ordinance* was unnecessary and should be deleted. The suggestion was accepted and the members agreed to delete it. With the above modification the Draft Prohibition of Riba Ordinance was finalized and the Chairman thanked all the members for their valuable contribution in this regard.

9. The worthy chairman remarked about the proposed Islamization of financial transactions Ordinance 2001 sent by Commission for Transformation of Financial System that a perusal therefore reveals that the same needs more consideration and is not comprehensive and exhaustive. So the Task Force decided to stick to the draft Prohibited of Riba Ordinance which has been finalized after thorough examination, detailed discussion and dedicated deliberations. It was decided that the next meeting of the Task Force would be held on 7-6-2001 in which the remaining laws already circulated to the Members would be discussed.

10. The meeting ended with a vote of thanks to the Chairman.

Drafted by:

Ch. Muhammad Younis
Secretary, Task Force

Approved by:

Dr. Mahmood Ahmed Ghazi,
Chairman, Task Force

MINUTES OF THE MEETING OF THE TASK FORCE HELD
ON 7-6-2001

A meeting of the Task Force was held on 7th June, 2001 at 9:30 A.M. in the committee room of the law. Justice Dr. Mahmood Ahmed Ghazi Minister for Religious Affairs, Zakat and Ushr. The meeting attended by the following: -

1.	Dr. Mahmood Ahmed Ghazi	Chairman
2.	Dr. Tariq Hasan	Vice Chairman
3.	Dr. S. M. Zaman	Member
4.	Mr. Naeem Hussain Nigar	Memeber
5.	Abdul Rahman Qureshi	Member
6.	Mr. Ali Munir	Member
7.	Dr. Ghulam Murtaza Azad	By invitation
8.	Mr. M. Ashraf Janjua	By invitation
9.	Mr. Noor Salam Shah	By invitation
10.	Syed Qamar Mustafa Shah	PSO to Chairman
11.	Ch. Muhammad Younis	Member/ Secretary

2. Justice (Retd) Amjad Ali, Dr. Waqar Masood, Mr. Salamatullah and Mr. Nasier A. Sheikh could not attend the meeting due to their pro-occupation.

3. The meeting commenced with the recitation from the Holy Quran by Dr Mahmood Ahmed Ghazi, Chairman, Task Force. The Chairman welcomed the Members and especially Mr. Muhammed Ashraf Janjua and Mr. Noor Salam Shah and informed them about the task accomplished by the Task Force. Mr. Mohammed Ashraf Janjua, secretary Commission for transformation of financial system, State Bank of Pakistan thanked the chairman for extending the invitation to him and apprised members about the work being carried out by the Commission for transformation of financial system.

4. The Task Force started the review of the remaining laws. First of all the Governments Savings Bank Act, 1873 was taken up. In section 10 the words 'interest accrued thereon' in the last line was proposed to be substituted by 'Shari'ah complaint return' as recommended by the Council of Islamic Ideology. Mrs. Naeem Hussain

Nigar maintained that the shari'ah-compliant mode may be specified. Mr. Ali Munir suggested that shariah-complaint return is more appropriate.

5. The Task Force decided to defer the discussion on negotiable instruments Act 1881 as the matters relating to domestic borrowings and discount etc. are to be settled first which involved intricacies and implications. So till the settlement of the above related matters discussion on the provision of negative instrument Act was postponed.

6. The Task Force there after took up the land acquisition act 1894 for discussion. In the last portion of section 28 of the act the provision regarding payment of interest on the excess amount of compensation awarded by the court was proposed to be substituted by rent of the property from the date of issuance of notification (by which the property was taken over) to the date on which the final settlement was made, in addition to the increase in compensation awarded by the court. Dr. Ghulam Murtaza Azad explain that the sale in such cases was not complete as per Shariah, because the owner of the land acquired did not agree to the price compensation fixed by the Collector so the rent of the property was proposed to be paid to the owner till the determination of the compensation by the Court. The amendment proposed by the Council of Islamic Ideology was adopted. In Section 32(1) (b) the words 'Government or other approved securities' were resolved to be substituted by 'non-interest bearing securities'. The remaining part of this section was also proposed to be amended suitably so as to delete 'interest' therefrom and substitute 'investment' by 'Shariah-compliant investment'. In Section 33 the word "interest and others" were proposed to be deleted as suggested by the CII. The remaining portion was resolved to be amended so as to substitute the 'approved securities' by 'non-interest bearing securities' and substitute 'interest' by 'return'. In Section 34 of the Act the Task Force resolved to substitute compound interest by rental value.

7. The Task Force considered and discussed the provision of the code of civil procedure 1908. In Section 2(12) which deals with the 'mesne profit' the 'interest on profit' was suggested to be substituted by the word "such damages as may be determined by the court". Discussion on section 34 was deferred. Section 34-A was discussed at length. Dr Tariq Hasan suggested that penalty @ at least 10% should be imposed for non payment of public dues. The words "interest" in the title of the section was substituted by the word "penalty". After lengthy discussion the Task

Force resolved that where the court is of the opinion that a suit was instituted with intent to avoid the payment of any public dues the court may, while discussing suit impose a penalty of 10% on such public dues and the said section was proposed to be amended accordingly. Sub-section (3) (a) was proposed to be amended so as to delete the explanation of “bank rate” given in the beginning of section. Section 34 (b) and section 35(3) were proposed to be deleted. Minor amendments in section 128 (2) (i) and section 144 were proposed so as to exclude the provision of interest therefrom.

8. In order XX rule 11(1) (2) the word “with or without interest” and as to the “payment of interest” word propose to be deleted. In order XX1 Rule 11(2)(g) the word “with interest (if any)” were suggested to be deleted. Order xx1 rule 38 was also slightly propose to be amended.

9. XX1 Rule 52, Rule 79(3), 80(3) and 89(3) what discussed at length and the word “interest” was substituted by the word “profit”. In Order XXI Rule 93 and in Order XXIV Rule 3 the word “interest” was substituted by the word “return”. After discussing at a considerable length the amendments proposed by the Council of Islamic Ideology regarding the remaining provisions of Order XXXIV, Rule 2(1), 2(2), 4, 7, 11 and 13 were adopted to exclude the provisions relating to interest therefrom. Similarly, the provisions of Order XXXIV, Rule 2(1) and 93 were also proposed to be amended as per recommendations of CII.

10. The Cooperative Societies Act, 1925 was also reviewed and the word “interest” was deleted from section 59.

11. The Cooperative Societies Rule 14, 22 and 41 were resolved to be amended so as to delete the word “interest” therefrom.

12. Regarding Insurance Act, 1938 the Task Force was of the view that the Insurance Act had already been repealed and replaced by Insurance Ordinance, 2000. So the said statute need not be discussed.
13. The discussion on State Bank of Pakistan Act, 1956 was deferred, in respect of amendment in section 22 (1).
14. The Agricultural Development Bank Rules 1961 were reviewed and in Rule 17 of the said Rules necessary amendments so as to substitute the word “interest” by “return/profit” were proposed. Discussion on the Banking Companies Rules 1963 was deferred whereas Section 25(2) of the Companies Ordinance, 1962 was proposed to be amended so as to substitute the words “interest” by “mark-up”.
15. It was observed that Rule 9 of the Banks (Nationalization) Payment of Compensation Rules, 1974 had already been scrutinized by the Task Force and necessary amendments had already been proposed.
16. The Banking Companies (Recovery of Loans) Ordinance, 1979 had already been repealed. So it was resolved that in view of repeal it need not be discussed.
17. After having completed detailed preliminary discussion on the above laws it was decided by the Task Force that the final review of these laws would be made in the next meeting to be held in the third week of the current month.
18. Th meeting ended with a vote of thanks to the chair.

Drafted by:	Approve by:
(Ch Muhammad Younis)	(Dr. Mahmood Ahmed Ghazi)
Secretary, Task Force.	Chairman, Task Force.

MINUTES OF THE MEETING OF THE TASK FORCE HELD
ON 19-6-2001

The meeting of the Task Force was held on 19th June, 2001 at 9:30 A.M in the Council Hall of the Council of Islamic Ideology. The first session was held under the Chairmanship of Dr. Tariq Hassan, Adviser to Finance Minister and the second session was presided over by Dr. Mahmood Ahmad Ghazi, Chairman/Minister for Religious Affairs, Zakat and Ushr. The meeting was attended by the following: -

- | | | |
|-----|--------------------------|------------------|
| 1. | Dr. Mahmood Ahmad Ghazi | Chairman |
| 2. | Dr. Tariq Hassan | Vice Chairman |
| 3. | Dr. S. M. Zaman | Member |
| 4. | Mr. Abdul Rehman Qureshi | Member |
| 5. | Mrs. Naeem Hussain Nigar | Member |
| 6. | Justice (Retd) Amjad Ali | Member |
| 7. | Mr. M. Ashraf Janjua | By Invitation |
| 8. | Dr. Ghulam Murtaza Azad | By Invitation |
| 9. | Mr. Noor Salam Shah | By Invitation |
| 10. | Mr. Salamatullah | By Invitation |
| 11. | Syed Qamatr Mustafa Shah | PSO to chairman |
| 12. | Ch. Muhammad Younis | Member/Secretary |

3. Dr. Waqar Masood, Mr. Ali Munir and Mr. Nasier A. Sheikh could not attend the meeting due to their pre-occupation.

4. The meeting commenced with the recitation from the Holy Quran by Dr. Tariq Hassan, Vice-Chairman, Task Force as Dr. Mahmood Ahmad Ghazi, Chairman Task Force was busy in Haj Conference. Upto 11:00 A.M Dr. Tariq Hassan presided over the meeting. The members of the Task Force were of the view that the time span has been emended by the Supreme Court upto June, 2002 and the Task Force has now enough time to discuss various aspects of the remaining laws. Some of the members suggested that there should be Task Force in the Ministry of Finance as well as

Commission for Transformation of Finance System. It was also suggested that the Task Force and Transformation Commission should hold joint meetings to evolve the strategy to accomplish their hazardous task within the stipulated period.

5. Dr. Mahmood Ahmad Gazi Joined the meeting of the Task Force at 11:00 A.M and for the remaining time he presided over the meeting Justice (Retd) Amjad Ali proposed that the Shariah Compliant modes and such like other provisions should form part of the schedule and the same should not be inserted in the body of the substantial law regarding prohibition of riba. It has to be an on-going process and schedule could be modified and amended as and when required. The chairman and all other members appreciated and approved the proposal. Justice (Retd) Amjad Ali was of the view that it was none of the functions of the supreme Court to suggest the mode of legislation as was done in the judgement on riba by directing the Task Force to draft new laws similarly directing the Commission of Transformation of Financial system for meeting the same etc. He suggested that a petition be moved to the Supreme Court for seeking clarification in this regard. Mrs. Naeem Hussain Nigar and Dr. Tariq Hassan as well as the other members were of the view that the Supreme Court has only given the guidelines in the regard.

5. There was a detailed discussion on the point as to how the Task Force should proceed further. There were two options before it i.e. either to examine the remaining laws first and then the other related issues be taken up or first to complete the task for determining the shariah complaint modes of financing and return etc. Dr. Tariq Hassan and Dr. S. M. Zaman Maintained that the Task Force should not suggest amendments just in a mechanical way and must deliberate upon all the issues related thereto so that substantial modification could be made. It was observed by the Task Force with Great concern that in true spirit or as per parameters given in the judgement of the Supreme Court, nowhere in the world Islamic system of Banking is in practice. Even in Sudan the Entire system was not Islamic. So we could not borrow any practical model for Pakistan. Mr. Abdul Rahman Qureshi maintained that we have to determine as to what task should be taken first and for this purpose we will have to work day in and day out to amend various laws as per direction of the Supreme Court. The Chairman and the other members agreed to it. Mr. Ashraf Janjua, Secretary of the Transformation Commission informed the Task Force about the interim report compiled by the Commission and it was suggested that the issues relating to Government borrowings which are very important may be resolved. Dr.

S. M. Zaman Suggested that the Task Force and Transformation Commission should complete all the work within the shortest possible period and then the Ministry of Finance should be asked to finalize the matter. The Chairman impressed upon the members of the Task Force to prepare a road map for future working. At the end it was decided that joint meetings of the Task Force and transformation commission may be held for further course of action.

6. The meeting ended with a vote of thanks to the chair.

Drafted by:

Ch. Muhammad Younis.

Member/Secretary, Task Force

Approved by: /

Dr. Mahmood Ahmad Ghazi

Chairman, Task Force

MINUTES OF THE MEETING OF THE TASK FORCE ON RIBA
HELD ON 02-05-2002

The meeting of the Task Force was held under the chairmanship Dr. Mahmood Ahmad Ghazi, Federal minister for Religious Affairs/Chairman Task Force, At 10:30 A.M on 2nd May, 2002 in the Committee Room of the Ministry of Law, Justice, Human Rights and Parliamentary Affairs. The Following Participated in the meeting: -

Dr. Mahmood Ahmad Ghazi	Chairman
Dr. S. M. Zaman	Member
Justice (R) Sh. Amjad Ali	Member
Dr. Tariq Hassan	Member
Mrs. Naeem Hussain Nigar	Member
Mr. Abdul Rehman Qureshi	Member
Dr. Ghulam Murtaza Azad	By Special Invitation
Mr. Mohammad Raza Khan	Member/Secretary
Syed Qamar Mustafa Shah	PSO to chairman
Mr. Wajahat Hameed	SO (LR)
Mr. Ali Munir	Member could not participate in the meeting for some pre-fixed commitments

2. The meeting commenced with the recitation from the Holy Quran. The Chairman introduced the agenda for the meeting that a draft law for the amendment and repeal of certain laws for elimination of Riba, (as directed by the Supreme Court) has been drafted by Justice (Retd) Sh. Amjad Ali in the light of earlier discussions at the Task Force meeting. He further pointed out that a draft law to be called the “Islamization of Financial Transactions Ordinance” initiated by the Transformation Commission was also under process which shall supplement the present draft by providing the definitions of some of the terms used herein. With the finalization of the said two draft laws, the job assigned to the Task Force,

by the judgement of the Supreme Court, shall be accomplished and further action shall be taken by the Transformation Commission. Thereafter the Government shall promulgate the laws.

4. Dr. Tariq Hassan observed that although the Task Force has to remain within the terms of reference and so the discussions on economic repercussions and financial analysis may not be within its scope yet the Task Force cannot divorce itself entirely from such discussions because any legislation without such consideration and analysis shall create financial chaos. Therefore, he suggested that either the Task Force should examine the economic repercussions and conduct financial analysis thereof or the Commission may be required to examine these issues. In the alternative, he suggested, that a joint meeting of the Task Force and the Commission should be held, whereby the policy parameters have to be worked out and then the law can be chiselled in the light of such parameters.

4. Dr. S. M. Zaman observed that the draft law might be approved in principle. However, in order to consider it further there should be a comparative table of the existing provisions and the proposed amendments of the relevant statutes. A copy of the report of the Commission may be made available so that the matter may be examined comprehensively from every aspect.

5. Justice (Retd) Sh. Amjad Ali commented that the draft law had been prepared in accordance with the earlier discussions and it should be processed and approved by this forum so that the job assigned to the Task Force should be completed before the expiry of the extended period to show the bona-fide of the Government, if further extension for implementation of the decision of the Supreme Court is being visualized. He suggested that while designing a viable and Shariah compliant substitute for penal interest. The trend of the superior Courts in respect of penal provisions as embodied in section 73-74 of the Contract Act, 1872 (dealing with the liquidated damages) may also be taken into consideration. He Pointed out that the trend of the Courts is the insist that the amount of the damages or compensation should not be more than the actual loss suffered by any party due to the breach of the contract or non-payment of the dues by other parties in the lar suit.

6. It was generally observed that the Commission have not welcomed a joint 'meeting and they have not reflected the Elimination of Riba Ordinance (already finalized by the Task Force and submitted to the Commission) in the report. It was

also suggested by all the members that the report of the Commission may be circulated so that the members may have an idea of the viewpoint of the Commission and it may be helpful in further discussions. It was also observed that before finalizing the Financial Transactions Ordinance as well as the Amending of Laws Ordinance, input may be sought from practicing bankers and lawyers. The need for seeking opinion from the experts, working in such institutions as Albarakah Islamic Bank, Al-Mizan Islamic Bank and PIDE was also emphasized. It was also proposed that an up-to-date report of the activities and achievements of the Task Force might be prepared and circulated to the members of the Task Force.

7. Finally it was concurrently decided that: -

- a) The draft law is approved in principle, however, it shall be reconsidered, if needed, in the next meeting of the Task Force along with the other Draft law and both the draft statutes shall be finalized expeditiously,
- b) The report of the Commission should be circulated to the members.
- c) An up-to-date report of the activities and performance of the Task Force may be prepared and circulated.
- d) The next meeting of the Task Force shall be held, if needed at 10:00 a.m on Sunday the 19th May 2002 in the Committee Room of the Council of Islamic Ideology.

8. The meeting ended with the prayer to Almighty Allah and vote of thanks to the chair.

Approved by the chairman

(Mohammad Raza khan)
Member/Secretary Task Force