

MAJOR CHANGES UNDER COMPANIES ACT, 2017

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at

**Pakistan Tax Bar Association &
Karachi Tax Bar Association**

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SECP
SECURITIES & EXCHANGE
COMMISSION OF PAKISTAN

Objectives

1. Provide maximum facilitation to the corporate sector and other stake holders
2. Strengthen regulatory frame work
3. Introduce maximum use of technology
4. Protection of the interest of shareholders
5. Abolish unnecessary requirements
6. Introduce appropriate terminologies
7. Remove the defects in the company law
8. Softer regime for the companies having no stake of the general public
9. Introduce new concepts adopted by different jurisdictions
10. Steps towards paperless environment in SECP
11. Protection of interest of creditors



SECP
SECURITIES & EXCHANGE
COMMISSION OF PAKISTAN

OVERVIEW

(Section 2)

NEW DEFINITIONS

Following new definitions have been provided :-

- Advocate (clause 1)
- Alter or alteration (clause 2)
- authorized capital (clause 5)
- Banking company (clause 6)
- Beneficial ownership of shareholders or officer of the company (clause 7)
- Board (clause 8)
- Book of account (clause 11)
- Chartered accountant (clause 13)



OVERVIEW

(Section 2)

NEW DEFINITIONS

- Chief financial officer (clause 15)
- Company law (clause 18)
- Cost and Management Accounts (clause 22)
- Document (clause 26)
- E-service (clause 27)
- Electronic document (clause 28)
- Employees stock option (clause 29)
- Expert (clause 30)
- Financial institution (clause 31)



NEW DEFINITIONS

(Section 2)

- Financial Period (clause 32)
- Financial statement (clause 33)
- Foreign company (clause 35)
- Government (clause 36)
- Holding company (clause 37)
- Mortgage or charge (clause 42)
- Net worth (clause 43)
- Notification (clause 44)
- Officer (clause 45)
- Ordinary resolution (clause 46)



NEW DEFINITIONS

(Section 2)

- Postal ballot (clause 47)
- Promoter (clause 50)
- Public interest company (clause 53)
- Public sector company (3rd Schedule)(clause 54)
- Regulations (clause 58)
- Rules (clause 59)
- Securities (clause 61)
- Securities exchange (clause 62)
- Shariah compliant company (clause 64)
- Single member company (clause 65)



NEW DEFINITIONS

(Section 2)

- Specified (clause 67)
- Turnover (clause 69)
- Unlimited company (clause 71)
- Valuer (clause 72)
- Voting right (clause 73); and
- Wholly owned subsidiary (clause 74)



NAME OF COMPANY & PROHIBITION OF CERTAIN NAMES

[Sections 10, 11 and 12]

- Reservation of a name for **60** days
- Identical, inappropriate, undesirable, deceptive or design to exploit or offend the religious susceptibilities of people **prohibited**
- Use of word “**modaraba**” and any other words which is permissible for any other special business requiring license from SECP like **NBFC's, stock brokerage** shall not be allowed by the registrar without prior approval of the Commission. The companies having or using such names shall be compelled to change the name suitably **[section 10(2)]**
- Cancellation of name if obtained on the basis of false or incorrect information and change of name if the company is incorporated
- Suo motu power of the Registrar to change the name of the company in case of non-compliance of directions by the company **[section 11(2)]**

INCORPORATION OF COMPANY

Memorandum

- Simple one page memorandum – a revolutionary change
- All lawful businesses allowed except the prohibited / restricted businesses
- Only principal line of business to be mentioned:

“**principal line of business**” means the business in which substantial assets are held or substantial revenue is earned by a company, whichever is higher **[Section 26(1)Explanation]**

- Name should **commensurate with the principal line of business** **[Section 26(1) Proviso]**
- 2 broad categories – normal company and specialized company

Impact: Reduce the cost of **starting a business**

Reduce hassle



INCORPORATION OF COMPANY

- Appointment of first directors and chief executive at the time of incorporation [Sections 157(1) & 186(2)]
- NTN of CEO / Directors mandatory [Section 153(h)] – Exemption granted for 2 years for small sized companies [Circular No.15 of 2017 dt. 08.06.2017]
- Correspondence address, if the company is not providing the registered office address.
- Payment of subscription amount within 30 days to the company – cancellation of shares on failure to deposit the money in the given period [section 17(2)]
- Certification of receipt of money by a practicing CA or ICMA within 45 days [section 17(3)]
- The object at s.no.1 in the Memo of the existing companies shall be deemed principal line of business - otherwise report the Principal line of business through a simple form – no amendment in the memorandum [Section 27(A)(iii)]



COMMENCEMENT OF BUSINESS BY A PUBLIC COMPANY

(Procedure simplified)

- No certificate to be issued – acceptance of documents by the registrar shall be conclusive evidence for a company to start a business

ALTERATION IN MEMORANDUM (Section 32)

- Since all the lawful (except restricted) objects shall be deemed to be part of object clause, no need to alter the memorandum
- Change in principal line of business – no confirmation of alteration - only amended copy should be annexed with the special resolution
- Confirmation of alteration would be required only on conversion of a normal company into a specialized company
- Requirement of filing true copy of the order by the company abolished. **Impact:** Reduction in cost of **doing business**

ASSOCIATIONS NOT FOR PROFIT

(Section 42)

- Specific grounds for revocation of licence is added – almost all the grounds for winding up

Consequences of revocation of licence include

- Prohibition of receiving further donations
- Transfer of assets to another not for profit company preferably having similar objects
- In case of failure to transfer assets, Commission to appoint administrator or to initiate winding up



REQUIREMENT TO APPOINT COMPANY SECRETARY

(Section 194)

- **SMCs** have been exempted from the requirement of appointing company secretary
Impact: Minimum regulatory requirements thus reducing cost of **doing business**
- All public companies will be required to avail services of a permanent company secretary having such qualification and experience as may be specified by the Commission
Impact: To ensure a unified mechanism



MAXIMUM USE OF TECHNOLOGY

By the **regulator, regulatee, members** as well as the stakeholders in all the areas particularly:-

- Service of documents/notices on the company, the members, the registrar and the Commission (**Sections 53, 54, 55**)
- Participation in the meetings by members and directors through video links; (**Section 134**)
- Voting through electronic means; (**Section 134**)

Impact: ensure maximum participation and reduce cost of the company

- Enabling provision empowering the Commission to notify mandatory on-line filing [**section 471(4)**]
- Enabling provision empowering the Commission to notify mandatory service of documents by the company on the members electronically – after a specified date the member requiring physical document shall bear the cost [**section 473**]
- Dividend can also be paid to shareholders through electronic mode (**Section 242**) – for listed co - transfer into bank account mandatory



SERVICES OF INTERMEDIARY

[Section 455]

- Concept of Intermediary
- Companies not having computer / IT infrastructure may be able to avail services of **Intermediary** for filling of documents etc.
- Intermediary shall be registered with the Commission in accordance with the regulations

Impact: Promote electronic filing

MANDATORY CONVERSION OF SHARES OF ALL COMPANIES INTO BOOK-ENTRY FORM

[Section 72]

- New companies since incorporation - from the date notified by the Commission
- Existing companies in 4 years - extendable by 2 years by the Commission

Impact: Reduction in disputes



CONVERSION OF STATUS OF COMPANIES

Enabling provision added for conversion of a:-

- Public company in to private company & vice-versa [section 46]
- private company into SMC and vice versa [section 47]
- unlimited company into limited company and vice versa [section 48]
- limited by guarantee into company limited by shares and vice versa [section 49]

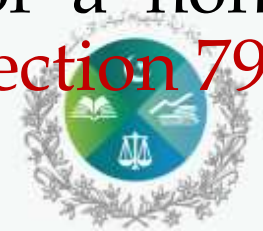
Impact: Flexibility to convert from one status to another



TRANSFER OF SHARES

(Section 76)

- Mandatory requirement by the **seller to offer** the shares to the existing members in case of **private company**
Impact: Further strengthen the original scheme of law relating to private company
- Failure to transfer within 15 days shall be deemed as refusal and right of appeal shall accrue
- **Role of nominee clarified-** He will be the trustee and responsible to transfer the shares to the **legal heirs** under the Islamic law of inheritance and in case of a non-Muslim members, as per their respective law (**section 79**)
Impact: Reduce disputes



FURTHER ISSUE OF CAPITAL

(Section 83)

- Min. and max. time frame of 15 to 30 days for the acceptance of offer prescribed
- Company to ensure the service of letter of offer on the shareholder before the commencement of period of offer
- Right of renunciation in favour of any other person in case of listed company provided

Requirement of special resolution for allotment other than cash in case of public co, prescribed



UTILIZATION OF PREMIUM FOR ISSUANCE OF BONUS SHARES

- Provision added with clarity that premium can be utilized for issue bonus shares (Section 81)

ISSUANCE OF SHARES AT DISCOUNT

(Section 82)

- Conditions for allowing discount by the Commission stated for listed company – if market price is lower than par value for continuous 90 days
- Procedure - approval by special resolution
- Approval of the Commission
- For a discount of less than 10% - no approval of the SECP would be required



PROHIBITION ON INVITATION OF DEPOSITS

(Section 84)

- Except for specialized companies, no company shall be allowed to invite and accept any deposit

“deposit” means: -- Now any advance against sale of goods or provision of services in the ordinary course of business shall also be included within the meaning of deposits.

Impact: Avoid fraudulent activities and protect the interest of public at large

REGISTRATION OF CHARGES

(Section 100 / 448)

- Time frame for registration of charge has been increased from 21 to 30 days
- **Pledge** shall also be registered
- The procedure for satisfaction of charge simplified. If the mortgagee confirms repayment of loan and issues NOC, the satisfaction of charge can be registered.



GENERAL MEETINGS

(Section 134 - 149)

- Passing of members' resolution through circulation in case of unlisted companies

Impact: convenience in case of emergency

- Softer regime for SMC – no requirement of holding AGM, EOGM and election of directors

Impact: convenience and reduction in cost

- Voting through postal ballot allowed and postal ballot includes e-ballot

Impact: ensure maximum participation

- Facility for attending the meetings through video link allowed
- Requirement of seeking approval from Registrar for holding EOGM by unlisted companies at a shorter notice abolished

Impact: convenience and reduction in cost

Mandatory postal ballot [134 (10)]

- Certain agenda items as notified by the Commission shall be transacted only through postal ballot



GENERAL MEETINGS

Poll through secret ballot [Section 144]

- On the direction of the chairman or
- On demand by the members having not less than 10% voting power

Statutory Meeting [Section 131]

- No statutory meeting would be required if the first AGM is held before the due date of statutory meeting

Annual General Meeting [Section 132]

- First AGM within 16 months, subsequent within 120 days after the close of financial year
- Extension of 30 days allowable even in case of first AGM
- Arrangement of video-link facility by listed company mandatory on the request of shareholders residing in a city holding at least 10% shares
- In case of listed company notice of AGM shall also be sent to the Commission



DIRECTORS

(Section 153)

Ineligibility of directors

- Stock broker, his spouse or a sponsor director or officer of a brokerage house can not be a director of a listed company.
- A person who does not hold an NTN, Commission may grant exemption **[clause (h) of Section 153]**

Appointment of woman director

Mandatory in case of public interest company **[Section 154]**

First Directors **[Section 157]**

- Must be appointed at the time of incorporation

Appointment of additional director in mid-term

- **Before first AGM** – through general meeting **[Section 157(2)]**
- **After the election** - the person acquiring, sufficient shares to get him elected may require the fresh election **[Section 162]**



DIRECTORS

(Section 153)

- Procedure for election in case of listed company is to be specified through regulations
Impact: Rights of strategic investor safeguarded
 - **Rectification of list of directors** on the pattern of Register of Members [Section 197]
- Selection of independent directors [Section 166]**
- From the data bank maintained by any institute, body or association as may be notified by the Commission

Protection to independent and non-executive directors (listed company) [Section 181]

- Immunity provided to such directors unless active involvement or negligence is proved
Impact: Safeguarding interests of such directors



DIRECTORS

(Section 153)

Disqualification of directors [Section 172]

- The Commission empowered (on its own motion or upon a complaint) to disqualify the delinquent director from holding such position in a company for a period of five years on a number of grounds as stated in this section – in addition to the grounds already covered in section 187 and 188 (existing law)
- **Impact:** Deterrence for malpractices

Cap on directorships in such number of companies as may be specified [Section 155]

- Compliance in 1 year
- Exemption – directorship in listed subsidiary



DIRECTORS

Maximum time frame for filling the casual vacancy in case of listed company

- 90 days **[Section 155(3)]**
- Election of directors – impediments to be reported 45 days before the due date of election **[Section 158]** – election not to be delayed beyond 90 days or such extended time as may be allowed by the registrar
- Power of the registrar to issue direction on the expiry of the given period to issue direction on its own motion or on requisition of members holding 10% capital / member **[Section 158]**

Proceedings of the directors **[Section 176]**

- No quorum requirement – if there are not enough directors to form a quorum for filling the casual vacancy
- Passing of board resolution by circulation allowed



DIRECTORS

Proceedings of the directors [section 176]

- No quorum requirement – if there are not enough directors to form a quorum for filling the casual vacancy
- Passing of board resolution by circulation allowed

Powers of director [section 183]

- Enabling provision added to:
 - specify the limit for incurring capital expenditure on any single item or to dispose of a fixed assets
 - notify the limit for undertaking obligations under leasing contracts
 - specify any other item in the power of the board
- restriction on a listed company to sale or dispose of the undertaking which may lead to closure of business operation unless there is a viable alternate business plan
- directors to act in good faith to promote the objects of the company and the benefits of its members

DIRECTORS

CHIEF EXECUTIVE

[Section 186]

- First chief executive must be appointed at the time of incorporation
- Government shall have the power to nominate its chief executive in case of public sector companies [Section 186(4)] as well as the companies where majority of the directors are nominated by Government [Section 187(4)]
- The person appointed against the casual vacancy shall hold office till the next election



DIRECTORS

CHAIRMAN IN A LISTED COMPANY

[Section 192]

- To be appointed within 14 days from the date of election, from amongst non-executive directors
- Chairman and CEO shall not be the same person in case of classes of companies specified by the Commission **[Section 192(2) Proviso]**
- Board shall define respective role and responsibilities of chairman and CEO
- Chairman to be the leader and ensure the board to play an effective role
- Every financial statement shall contain a review report by the chairman on overall performance of the company and effectiveness of the board

LOANS TO DIRECTORS

(Section 182)

Except for listed companies, no approval of Commission for loan to directors and the directors of its holding company.

INVESTMENTS IN ASSOCIATED COMPANIES AND UNDERTAKING

[Section 199]

- “Guarantees” have also been included to the description of “loan to associated companies”
- Agreement mandatory specifying the nature, purpose, period of the loan, rate of return, fees or commission, repayment schedule for principal and return, penalty clause in case of default or late repayments and security for the loan (if any)
- Parameters for return on investment stated - shall not be less than the borrowing cost or the rate as may be specified by the Commission
- Directors to certify that investment made after due diligence and financial health of the borrowing company for the repayment of loan
- Provision for amendment to the investment or nature thereof stated

RELATED PARTY TRANSACTIONS

(Section 208)

- New provision has been introduced whereby the term “related party” has been elaborately described and a mechanism provided to have a check and balance on related party transactions undertaken by the companies.

CLASSIFICATION OF COMPANIES

(Section 224)

(details given in the Third Schedule)

- Different categories of companies have been prescribed for the purpose of Act pertaining to preparation and audit of financial statements:
 - Small Sized Company (SSC)
 - Medium Sized Company (MSC)
 - Public Interest & Large Sized Company (PI&LSC)



DIRECTORS' REPORT

(Section 226)

- Exemption to the private companies - capital up to Rs.3 million
- A listed company to provide additional information in the directors' report having impact on the future performance and on environment. And action taken for CSR etc. [section 227(3)]



AUDIT

(Section 246, 247, 248)

- Time frame for appointment of first auditor increased to 90 days
- No audit requirement for a private company having capital up to Rs.1.0 M
- Qualification – CA / ICMA – for private company having capital between Rs. 1.0 M to 3.0 M
 - Impact:** Minimum requirements for reducing cost of small companies
- Additional rights given to the auditors:
 - requiring information from the employees of the company;
 - access to the accounts of subsidiary companies and its employees

Cost audit to be conducted on the recommendation of relevant regulatory authority

QUARTERLY ACCOUNTS

[Section 237]

- Extension up to 30 days in filing of first quarterly accounts of listed companies allowed
- Time period of 2 months given for the preparation of quarterly accounts of second quarter
- Quarterly Financial Statements of listed companies only to be posted on the website for such period as specified by the Commission and filed to SECP electronically
- No need to send in physical form to the members
- A copy of these statements in paper form shall be dispatched if so requested by any member without fee.



RESTRICTION ON NON-CASH TRANSACTIONS INVOLVING DIRECTORS

[Section 211]

- a director of the company or
 - its holding
 - subsidiary or
 - associated company or
 - a person connected with him
- not allowed to acquire any assets from the company and vice versa for consideration other than cash without the approval of general meeting
- all cash transactions only through banking channels



LIABILITY FOR UNDESIRED ACTIVITIES OF THE SHAREHOLDERS

[Section 215]

A member of a company shall

- act in good faith
- not conduct themselves in a manner that is considered disruptive to proceedings of the meeting
- not exert influence or approach the management directly for decisions which may lead to create hurdle in the smooth functioning of management
- penal action for the violation



SERIOUS FRAUD INVESTIGATION

(Section 258)

- Investigation in cases which are of serious nature and has impact on the public at large- joint investigation team to be headed by SECP- members includes FIA, NAB etc.
- to be ordered by the Commission in particular circumstances.

UNIFORMITY IN THRESHOLD FOR LEGAL ACTION

(Section 286)

- A uniform threshold of 10% of the voting rights for filing of applications or taking legal actions against the company by the shareholders



EXEMPTION FROM FILING OF ANNUAL RETURN

[Section 130(5)]

- No annual return to be filed if there is no change from the last annual return
- A company other than SMC or a private company having paid up capital of more than Rs. 3 million shall report that there is no change

FILING OF ACCOUNTS

- Capital up to 1.0 M – unaudited accounts to be filed **[Section 234]**
- Capital exceeding 1.0 M but not exceeding 10.0 M or such higher amount as may be notified by the Commission – no need to file **[Section 233]**
- Filing time for listed – 30 days after AGM and for others 15 days after AGM **[Section 233]**



DIVIDEND

- Specie dividend – only in the shape of shares of listed company [section 241]
- Enabling provision to withhold the dividend in case of incomplete documentation [section 243 (3)]
- In case of a listed company, dividend payable in cash shall only be paid through electronic mode directly into the bank account shareholders. [section 242 (2nd proviso)]

Impact: It is necessary for the purpose of Anti Money Laundering law

Unclaimed dividend to vest with Federal Government [section 244]

- dividend unclaimed for 3 years to be deposited in a separate account with NBP or SBP for the credit of the Federal government – income generated from such account to be transferred / used for investors' education program of the Commission. The account may also be used as a collateral by a clearing house

Establishment of Investor Education and Awareness Fund [section 245]

- Enabling provision added to create a Fund which shall provide for investor education and awareness measures.

AMALGAMATION OF COMPANIES

(Section 279 to 285)

- Jurisdiction to allow merger, amalgamation and reconstruction of companies has been shifted from the Court to the Commission
- Board of Directors empowered to approve the amalgamation of:
 - subsidiaries of a holding company
 - wholly owned subsidiaries into its holding company

No approval even of the Commission would be required in such cases

Impact: Early disposal, cost reduction



WINDING UP (Section 301)

- additional grounds for winding up by court added
- default by a company in filing its financial statements or annual returns for 2 financial years
- conduct of business by a company in a manner oppressive to the minority members or persons concerned with the formation or promotion of the company
- revocation of a license
- any other ground notified by the Commission



PANEL OF PROVISIONAL MANAGER AND OFFICIAL LIQUIDATORS

(Section 315)

Panel to be maintained by the Commission, consisting of individuals from disciplines including chartered accountancy, law, company secretary, cost and management accountancy and retired public servant etc.

VALUATION REGIME

(Section 460)

Valuation of assets/services mandatory by the qualified valuer registered with the Commission for allotment of shares for consideration other than cash



MEDIATION

(Section 276, 277)

- Option to resolve disputes through mediation provided
- The Commission has been empowered to maintain a panel of experts to be called the “mediation and conciliation panel”
- Disputing parties may before; or after entering into a formal dispute resolution process, pending before the Commission or the Appellate Bench may approach the Mediation and Conciliation Panel

Impact: Facilitating alternative dispute resolution for reducing cost of the companies.

CODE OF CORPORATE GOVERNANCE

(Section 156)

- Enabling provision added to frame the Code for corporate governance.



ACCEPTANCE OF DOCUMENTS PRESENTED AFTER PRESCRIBED TIME (Section 468)

- A revolutionary change
- As a result of this provision the late fee paid shall be full and final liability with respect to delay in filing up to 2 years and no adjudication proceeding shall be initiated
 - **Slabs**
 - a) within 3 months – 1 time additional
 - b) within 6 months – 2 times additional
 - c) within 1 year – 3 times additional
 - d) within 2 years – 4 times additional
 - **Exception**

Public interest company

Impact: Companies shall be able to rectify overdue filings without any cumbersome process.



SHARIAH COMPLIANT COMPANY AND SHARIAH COMPLIANT SECURITIES

(Section 451)

- “*Shariah* compliant company” means a company which is conducting its business according to the principles of *Shariah* and declared as such in accordance with the regulations
- No security to be called as *Shariah* compliant unless it is declared as such in accordance with the regulations
- Enabling provision to specify fit and proper criteria to carry out the function of *Shariah* advisory, *Shariah* compliance and *Shariah* audit, etc.



INACTIVE COMPANIES (Section 424)

- A company formed for a future project or to hold an asset or intellectual property; or has no significant accounting transaction, or which is not in operation during the last two years may apply for obtaining the status of a inactive company

EASY EXIT OF A DEFUNCT COMPANY (Section 426)

- Enabling provision added to provide a soft regime for the easy exit of a company which has ceased to operate and having no assets and liabilities



AGRICULTURE PROMOTION COMPANY

(Section 457)

- An enabling provision added to facilitate the agriculture sector.
- It should be formed by the farmers.

Classification

- (i) Producer Company - to primarily, deal with the produce of its members
- (ii) Collateral Management company – to engage in the activity of managing produce as collateral, including warehousing and facilitation of commodity financing.
- Detailed parameters for such companies shall be provided through regulations.
- Exemptions from the applicability of different provisions of the Act to be notified.

COMPANIES' GLOBAL REGISTER OF BENEFICIAL OWNERSHIP

(Section 452)

- It is in the background of recent developments concerning off shore investments across the globe
- The officers and substantial shareholders (10% shares) - Pakistani citizen - in a local company having any share or any other interest in a foreign company or body corporate shall report to the local company about his investment abroad – applicable on Pakistani citizens only
- The local company shall file the said information to the Commission through special / annual return
- All such information shall be recorded by the Commission in a register to be known as the “Companies’ Global Register of Beneficial Ownership”
- The information in the Global Register shall be available to FBR and other authorities and the court

FREE ZONE COMPANY (FZC)

(Section 454)

New concept of Free Zone Company – some relaxations and exemptions of the Companies Act, 2017 as may be notified to be given

The information about the shareholding of foreigners in companies operating in EPZ and other free zones declared by the Federal Government shall not be publicly available

Exceptions:

- revenue authorities collecting tax, duties and levies or
- requirement or obligation under international law, treaty or commitment of the Government

It may be dispensed with from the use of the words “**Private Limited**” or “**Limited**” - its name shall signify **FZC** at the end

REAL ESTATE COMPANY

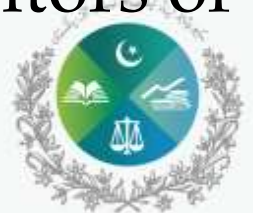
(Section 456)

- To regulate the matters relating to advances and deposit collected by such companies
- Restriction on accepting any advances or monies in any form whatsoever, against any booking to sell or offer to sell unless the company has obtained necessary permission / approval / NOC from the concerned authority (CDA/LDA etc.)
- Written agreement with the customer mandatory before accepting any money against sale/purchase of any apartment, plot or building as an advance payment



REAL ESTATE COMPANY

- Restriction on advertisement for any real estate project without the approval of the Commission and NOC of the concerned authority;
- All the monies received from the allottees' shall be deposited in a separate ESCROW account to be opened in the name of the project;
- The ESCROW account shall be dedicated exclusively for carrying out the project;
- No attachment shall be imposed on the payment of such ESCROW account for the benefit of creditors of the company.



QUOTA FOR PERSONS WITH DISABILITIES IN PUBLIC INTEREST COMPANIES

[Section 459]

- Applicable on every public interest company having at least 100 employees
- 2% quota for employment of disable persons
- Disabilities to be specified through regulations or as provided under any Federal or Provincial law

SECURITY CLEARANCE OF SHAREHOLDER AND DIRECTOR

[Section 461]

- Any shareholder or director or other office bearer
- Company or class of companies as may be notified by the concerned Minister-in-charge of the Federal Government



Formation of Joint Investigation Team (JIT)

[Section. 258 (4)] (Serious fraud investigation)

- If the matter of public importance or it is in the interest of public at large
- concerned Minister-in-Charge of the FG to form a JIT
- to be headed by the senior level officer of the Commission, not below the rank of additional director, and may include any professional under sub-section (1) along with Gazette officer of any Federal law enforcement agency, bureau or authority for providing assistance in investigation



ADJUDICATION OF OFFENCES

Three modes of cognizance of any offences by the Court have been provided:

- a) All Offences provided in the Act are to be taken cognizance by the court on the complaint filed by the Commission only with the exception of 8th schedule or otherwise provided in the Act
- b) Offences in the 8th schedule shall continue to be filed as a private complaint and in addition to the Commission or registrar , 5 % of issued capital share holders or creditors having equivalent interest may also file complaint and process of investigation as provided in section 38 of the SECP Act, 1997 may not be required.



ADJUDICATION OF OFFENCES

- c) The Company Bench having passed judgment as to *prima facie* question raised in a petition in the relevant sections, the Court may, in addition, also send a reference for adjudication of offences to the court (Court of Sessions) as provided under section 482 under sections 126 (rectification of register of members), 197 (rectification of register of directors & officers)and 400 (penalty for fraud for company under liquidation)



JURISDICTION OF THE COURT & CREATION OF BENCHES

[Section 5 & 6]

- *No Court shall have jurisdiction save as is or may be conferred on it by the Constitution or by or under any law (Article 175 (2) of the Constitution of Islamic Republic of Pakistan)*
- The Court having jurisdiction under the Companies Act, 2017 (the “Companies Act”) shall be the **High Court** having jurisdiction at place in which the registered office of the company is situated.
- **Non-obstante clause** has been introduced in the Companies Act whereby **civil courts or any other courts shall not have jurisdiction** to entertain any suit in respect of any matter in which the Company Bench has jurisdiction. **This provision will clarify the ambiguity of forum.**



JURISDICTION OF THE COURT & CREATION OF BENCHES

[Section 5 & 6]

- The benches of the High Court are envisaged to be functioning on permanent basis subject to the exercise of authority by the Chief Justice of the respective High Court.
- Registrar of the Company Bench assisted by such other officers shall perform all ministerial and administrative business of the Company Bench including receipt of petitions, applications, written replies, issuance of notices, etc.
- A separate secretariat for this purpose may also be set up by the Chief Justice if deemed appropriate.



NEW OFFENCES

(Section 453)

- Duty of every officer to take reasonable measures for prevention of offences relating to fraud, money laundering and terrorist financing
- Punishment of imprisonment for a term which may extend to three years and with fine which may extend to one hundred million rupees



NEW OFFENCES

(Section 496)

- Penalty for false statement, falsification, forgery, fraud, deception: Whoever in relations to affairs of the company or body corporate —
- (a) **makes a statement or submit any document in any form, which is false or incorrect in any material particular, or omits any material fact, knowing it to be material**, in any return, report, certificate, statement of financial position, profit and loss account, income and expenditure account, offer of shares, books of account, application, information or explanation required by or for the purposes of any of the provisions of this Act or pursuant to an order or direction given under this Act **with an intention to defraud, or cheat the Commission or to obtain incorporation or to avoid any penal action for an offence under this Act or administered legislation;**

NEW OFFENCES

- (b) makes any false entry or omits or alter any material particular from books, paper or accounts with an intent to defraud, destroy, alter or falsifies any books of account belonging to or in his possession shall commit an offence of **falsification of account**;
- (c) submit, present or produce any forged or fabricated document, knowingly to be forged or fabricated, to the Commission for the purposes of cheating or cheating by personation or to obtain any wrongful gain or wrongful loss or to avoid any penal action for an offence under this Act or administered legislation; or



NEW OFFENCES

- (d) employ any scheme, artifice or practice in the course of business of the company to defraud or deceive general public; shall be punishable with imprisonment which shall not be less than one year but which may extend to seven years and shall also be liable to fine which shall not be less than the amount involved in the fraud but may extend to three times the amount involved in the offence:

Provided further that in case of offence involves public interest, the term of imprisonment under this section shall not be less than three years along with fine. All offences under this section shall be non-bailable and non-compoundable.

THANK YOU