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A brief on the Companies Ordinance 2016

A brief on the Companies Ordinance, 2016

This publication contains an analysis of the pertinent differences between the repealed and the new Ordinance. We recommend that while considering the application of various sections to any particular case, reference should be made to the specific wordings of the relevant statute.

This publication will be updated after the Ordinance is approved by the Parliament, to provide comments on changes made.

The update will be posted on our website www.kpmg.com.pk subsequent to passage of the Ordinance.

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Preamble

A company is an artificial person created by law, which can sue and be sued, except that it cannot be jailed or hanged. Which is why, ever since the Dutch East India Co. issued stock for the first time in history, around 1602, the lawmakers continue to struggle to frame regulations robust and comprehensive enough to protect the interests of the minorities, and to restrain, as far as possible, companies from indulging in fraudulent practices and illegal acts. While the thrust of these regulations is focused towards holding those at the helm of affairs of the corporations responsible for the vagaries of the latter, indeed a logical approach in the given circumstances, opaqueness of the corporate veil has continued to frustrate the long arm of the law even in this apparently simple objective.

In hindsight, corporations, or companies as referred to in Pakistan, have been the backbone for capitalism, and arguably, have played the most significant role in improving the quality of life of humanity. On the other hand, the concept of limited liability does foster reckless financial decisions, since management stands to lose nothing on a personal level in the case of any adverse eventuality, hence the need for regulation. Additionally, as companies have continued to grow and the world became flat, pursuant to globalization coupled with the advances in information technology, the need for fairly regular review and modification of the underlying legislation regulating companies has become necessary and urgent. The Companies Ordinance 1984 substituted the Companies Act 1913, 37 years after independence. However, just 18 years later, the Companies Amendment Act 2002 brought in material changes in corporate legislation. Within a decade, the need to substantially revise, or substitute altogether, the corporate laws was established by the authorities, the Securities & Exchange Commission of Pakistan (SECP) whose efforts have now culminated in the enactment of The Companies Ordinance 2016 (the Ordinance). Any legislation comprising around 500 sections of complex phraseology, ab initio, is a herculean effort; kudos to the entire team at SECP and Ministry of Finance for this achievement.

The quest to achieve the Golden mean of corporate regulations has globally experienced many ups and

downs in recent time, especially in the case of the Banking Sector where easing of regulations fostered a recession with Basel III again tightening the regulatory framework. In general, public outcry, pursuant to corporate scandals, is a catalyst for a harsher regulatory regime which appears to be the broader drift of the Ordinance.

There are 578 companies listed on the Pakistan Stock Exchange, which it can be said require proactive monitoring, in light of public interest, minority holdings and other factors such as environment and social welfare. Albeit, even in these cases a balanced approach is warranted, which ensures safeguarding of promoter's interest side by side with the minority. However, more importantly, in Pakistan's case, there is an urgent need to facilitate the migration of the informal business sector within the folds of the documented economy and corporate laws can play a significant role to meet this objective. There are in excess of 60,000 companies registered with the SECP and this is the segment which needs facilitation and encouragement to promote a corporate culture in the country. If the Ordinance is perceived to be more authoritarian than necessary by the business community, it might impact other economic objectives of the government. Accordingly, it would be highly productive for SECP to in the short term continuingly engage the stakeholders during the transition.

Constitutionally, unless extension is granted, the Ordinance will need to be laid before the National Assembly, and deemed to be a bill, within a period of 120 days. It would therefore in the best interest of all stakeholders, especially senior management and their legal teams, to carefully review and analyse the changes brought about by the Ordinance focusing on how it might impact them going forward.

This commentary on the Ordinance is an attempt to summarize the primary changes in corporate legislation, brought about by the Ordinance, when compared with the Companies Ordinance 1984 as amended from time to time, with a view to facilitate an understanding of the new regulatory regime.

In summary the Ordinance significantly enhance SECP' authority in relation to: investigation and related matters; disqualification of directors; the power to call

for information; mediation, compromises, arbitration, arrangement and reconstruction and in the case of general administrative functions. To quote a famous cliché, with great power comes great responsibility, SECP may consider devising rules and procedures for a fair and swift implementation of its newly acquired quasi judicial powers.

Perhaps pursuant to the current negative publicity relating to offshore companies, disclosure and reporting requirements of related parties, especially foreign companies have been introduced or made more stringent. Compliance with some of the requirements might prove challenging in certain cases.

In the backdrop of a stricter regulatory environment, matters relating to audit and financial reporting have been significantly, if not fully, streamlined with the International Standards on Auditing and International Financial Reporting Standards, respectively. In addition additional disclosure requirements have been identified in the Fourth and Fifth schedule. Overall this is a welcome move.

In a positive development, a lot of filing, registration and winding up requirements have been simplified with a proactive thrust towards automation, i.e. e-filing. Particularly life has been made simpler for single member companies and companies with small capital.

Executive Summary

- A number of new definitions added and some existing definitions are amended to bring clarity. Several of these terms are already in use in code of corporate governance and general business practices.
- The definition of associated undertakings / companies amended to exclude associate relationship due to existence of independent directors as common directors between the two entities.
- A special bench to be formed at each of High Courts to deal with Companies Ordinance matters in a speedy manner. An office of Registrar of Company Bench to be created to administer the cases.
- Various filings/ service by electronic modes allowed. These include service of summons by the Courts, service of documents on a company, service of documents on Commission or the registrar, service of notice on a member. After the notified date all information, notices and accounts or any other document to be provided by the company to its members, shall only be provided electronically on the email address provided by the members. The Commission has been empowered to require mandatory electronic filing of any document, return or application to be filed, lodged or submitted with the Commission or the registrar after the notified date.
- A company may carry on or undertake any lawful business or activity except a business which is prohibited or restricted by any law, rules or regulations unless necessary licence, registration, permission or approval has been obtained. Memorandum of association made simpler by requiring statement of principal line of business only. The name of the company should commensurate with the principal line of business.
- Process for conversion of a company from public to private, private to single member, unlimited to limited, and a company limited by guarantee to a company limited by shares and vice-versa for each has been laid out.
- A company having share capital, shall have shares in book-entry form only.
- First right of refusal made mandatory for sale of any shares held by members of a private company.
- All listed companies to provide a video link to attend AGM from cities other than where the meeting is being held in case members holding more than ten percent are resident in that other city. On a poll, vote may be given through video link.
- Members of a private company or a public unlisted company (having not more than fifty members), may pass a resolution (ordinary or special) by circulation signed by all members who are entitled of vote.
- A resolution in writing signed by all the directors or the committee of directors entitled to receive notice of a meeting of the directors or committee of directors shall be as valid and effectual as if it had been passed at a meeting of the directors or the committee of directors duly convened and held.
- A data bank of independent directors would be developed and all companies would be required to select independent directors from such data bank.
- An independent director; and a non-executive director; shall be held liable, only in respect of such acts of omission or commission by a listed company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.

- Loans to directors or their relatives including issuance of a guarantee or provision of security in connection with the loans allowed with approval through a resolution of the members of the company. In case of a listed company approval of the Commission is also required. The above is not applicable to a company which in the ordinary course of its business provides loans or gives guarantees or securities.
- The Board has been empowered to take decisions for takeover or acquisition of a controlling or substantial stake in another company.
- A listed company shall not be entitled to sell or otherwise dispose of the undertaking, which results in or may lead to closure of business operation or winding up of the company, without there being a viable alternate business plan duly authenticated by the Board.
- A new section on related party transactions has been inserted setting out mechanism for all related party transactions.
- Restriction imposed on company from selling or purchasing any asset from / to a director or a connected person for a consideration other than cash, without the approval of members.
- The companies have been classified into three categories, public interest companies & large sized companies, Medium Size companies and small sized companies and accounting framework for each type laid down for each type.
- All companies allowed to prepare their financial statements in full compliance with International Financial Reporting Standards (IFRSs), if they so desire. However, regulated (e.g. banking companies, NBFIs, Insurance, etc.) and those entities whose accounts are affected by various circulars from SECP or SBP will not be able to prepare such financial statements.
- The financial year of the holding company and subsidiaries should coincide unless there are good reasons against it. The companies have been provided liberty that either the holding company may change its financial year according to subsidiary company and vice versa.
- In case of listed company, the financial statements should also be signed by Chief Financial Officer in addition to CEO and a director.
- In case of a listed company, any dividend payable in cash shall only be paid through electronic mode directly into the bank account of shareholders.
- Unclaimed shares, modaraba certificates and dividend should be transferred to federal government after a period of three years.
- An Investor Education and Awareness Fund ("Fund") to be managed and controlled by the Commission shall be formed. This would be funded by profits/ interest on companies unclaimed instruments/dividend, grants and donations by federal government and any other forfeitures. The Fund shall be utilized for the promotion of investor education and awareness, educational activities including seminars, training, research and publications and investor education and awareness activities.
- The registrar, inspector or investigation officer has been empowered, with the prior permission of commission, to enter such place and cause a search to be made at any time and freeze, seize or take possession of and retain any document, object, article, material, thing, account books, movable or immovable property where he has reasons to believe that documents, book and paper or anything relating to any company or any chief executive or officer of such company or any associate of such person is useful or relevant to any proceedings or investigation under the Ordinance or which may be destroyed, mutilated,

altered, falsified or secreted. These powers have been widened and were previously available with the permission of Court.

- New section has been inserted empowering the Commission to initiate investigation proceedings where it thinks that any fraud or activity is undertaken by a company having serious implications.
- Commission is empowered to maintain a Mediation and Conciliation Panel consisting of suitably qualified individuals for mediation between the parties for any proceeding under the Ordinance before the Commission or the Appellate Bench.
- A fresh concept of dispute resolution has been introduced and the company, its management or its members or creditors may directly refer relevant matters to any member of the mediation and conciliation panel maintained before taking recourse to formal dispute resolution.
- The matters to approve compromise, arrangement, reconstruction and amalgamation are being given under the jurisdiction of the Commission (previously under the jurisdiction of Court).
- Amalgamation of wholly owned subsidiary into its holding company or wholly owned subsidiaries of the same holding company allowed without the approval of the Commission.
- Commission to maintain a panel of provisional manager and official liquidators.
- The Commission has been empowered to seek information from foreign companies (which has a place of business or a liaison office in Pakistan, whether by itself or through an agent, physically or through electronic mode or conducts any business activity in Pakistan) and any of its present or past directors, officers or auditors or indirectly the beneficial owners of its equity securities about the

shareholding in the Company. The said person who ceased to hold office more than five years before the notice shall however not be compelled to furnish information.

- A company which ceases to operate and has no known assets and liabilities has been provided with easy exit option by applying to the registrar in a specified manner seeking to strike off its name from the register of companies on payment of prescribed fee.
- The companies would be required to maintain global register of beneficial ownership by substantial shareholder or officer of a company having ten percent or more shares in a foreign company or body corporate.

The substantial shareholders or officers holding such interest are required to report to the company on a specified form within 30 days of holding of such interest. The company is currently required to submit required information on a specified form to the Registrar within 60 days from the date of promulgation of the Ordinance. The above noted details are required to be submitted to Registrar alongwith the Annual Return. The Commission shall keep record of the information of the companies in a global register for Beneficial Ownership.

- Concept of Free Zone Company added for companies formed for the purpose of carrying on business in the export processing zone or other area notified as free zone.
- For the purposes of filing under the Ordinance, a person may avail services of “intermediary” as defined in the Electronic Transactions Ordinance, 2002
- A company cannot engage in the business of real estate unless its principal line of business is development of real estate projects.

- A concept of Agriculture Promotion Company introduced having its principle line of business related to produce for agriculture promotion or managing produce as collateral or engaged in any activity connected with or related to any Produce or other related activities. Such company shall primarily deal with the produce of its members.
- Where valuation is required, in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities, it shall be valued by a person having such qualifications and experience and registered with the Commission.
- A standard scale of penalty for offences set out.
- An amendment has been made whereunder powers, in relation to enquiries and proceedings, conferred on the Federal Government are now vested with the Commission.
- Section 235 of the repealed Companies Ordinance 1984 ('repealed ordinance') relating to treatment of surplus arising on revaluation of fixed assets has not been carried forward in The Companies Ordinance, 2016. As the said section carried certain accounting treatment relating to revaluation of fixed assets, the affected companies would need to change their accounting policies and account for the change in accordance with IAS 8 – 'Accounting Policies, Changes in Accounting Estimates and Errors'. The main effects would be disclosure of surplus under equity and not able to offset deficit on revaluation in one category of assets with surplus on another category of assets.
- Federal government has been given the right to nominate Chief Executive of a company where majority of directors is nominated by the Federal Government. His term shall also be determined by the Federal government.
- The definition of financial institution has been expanded to include a modaraba or modaraba management company, leasing company, investment bank, venture capital company, financing company, unit trust or mutual fund of any kind and credit or investment institution, corporation or company.
- New provision has been added whereby a company, other than a listed company, which is formed for a future project or to hold an asset or intellectual property and has no significant accounting transaction, can obtain the status of "Inactive Company" by making an application to the Registrar in a prescribed manner.
- No company shall be called a Shariah compliant company unless it is conducting its business according to the principles of Shariah and it has obtained a certificate of Shariah compliance from the Commission. No security shall be called a Shariah compliant security unless the proceeds from the security are utilized for Shariah permissible business and it has obtained a certificate of Shariah compliance from the Commission.
- Mandatory requirement to have NTN for a director has been included.
- Every officer of a company shall endeavor to prevent the commission of any fraud, offences of money laundering including predicated offences as provided in the Anti-Money Laundering Act, 2010 (VII of 2010) with respect to affairs of the company and shall take adequate measures for the purpose.
- A person may on acquiring interest in a company as member, represented by shares, at any time after acquisition of such interest deposit with the company a nomination conferring on a person the right to protect the interest of the legal heirs in the shares of the deceased in the event of his death, as a trustee and to facilitate the transfer of shares to the legal heirs of the deceased subject to succession to be determined under the Islamic

law of inheritance and in case of a non-Muslim members, as per their respective personal law.

- Additional disclosures required in the financial statements. These includes:
 - Revaluation surplus on property, plant and equipments, long term deposits and prepayments, unpaid dividend and unclaimed dividends to be disclosed as separate line item on statement of financial position.
 - In case of revaluation, forced sale value of property, plant and equipments or investment property to be disclosed.
 - Additional disclosure in respect of contingencies, e.g. name of the Court, the date instituted, principal parties and factual basis of proceedings.
 - Names and relationship for royalty payments.
 - General information about the company to include, geographical location and address of all business units, particulars of immoveable assets including location and area of land, name of associated companies or related parties and the basis of relationship with them.



Projects

PRO

PR

PE

PTI

ETOS

Significant changes from Companies Ordinance, 1984

PART I - PRELIMINARY

Definitions

ASSOCIATED COMPANIES AND ASSOCIATED UNDERTAKINGS

Section 2 (4)

The definition of associated companies and associated undertakings has been amended to exclude companies interconnected by virtue of directorship of a person appointed as an independent director. This change will help in bringing the definition in line with definition of related parties in IAS 24 – Related party transactions: IAS 24 provided that the two entities are not related parties simply because they have a director or other member of management personnel in common.

BENEFICIAL OWNERSHIP OF SHAREHOLDERS OR OFFICER OF A COMPANY

Section 2 (7)

"beneficial ownership of shareholders or officer of a company" means ownership of securities beneficially owned, held or controlled by any officer or substantial shareholder directly or indirectly, either by:

- (a) him or her;
- (b) the wife or husband of an officer of a company, not being herself or himself an officer of the company;
- (c) the minor son or daughter of an officer where "son" includes step. son and "daughter" includes step-daughter; and "minor" means a person under the age of eighteen years;
- (d) in case of a company, where such officer or substantial shareholder is a shareholder, but to the extent of his proportionate shareholding in the company.

Provided that "control" in relation to securities means the power to exercise a controlling influence over the voting power attached thereto.

Provided further that in case the substantial shareholder is a non-natural person, only those securities will be treated beneficially owned by it, which are held in its name.

Body corporate

Section 2 (9)

The definition has been further elaborated to include the following:

- (a) A company incorporated under this Ordinance or company law;
- (b) A company incorporated outside Pakistan; and
- (c) Statutory body declared as body corporate in the relevant statute.

Books of account

Section 2 (11)

The definition has been elaborated to include records maintained in respect of:

- (a) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;
- (b) all sales and purchases of goods and services by the company;
- (c) all assets and liabilities of the company; and
- (d) items of cost in respect of production, processing, manufacturing or mining activities.

Financial institution

Section 2 (31)

This definition has been further elaborated to make it in line with definition given in Financial Institutions (Recovery of Finance) Ordinance, 2001.

“financial institution” means and includes:

- (a) any company whether incorporated within or outside Pakistan which transacts the business of banking or any associated or ancillary business in Pakistan through its branches within or outside Pakistan and includes a government savings bank, but excludes the State Bank of Pakistan;
- (b) a modaraba or modaraba management company, leasing company, investment bank, venture capital company, financing company, unit trust or mutual fund of any kind and credit or investment institution, corporation or company; and
- (c) any company authorised by law to carry on any similar business, as the Federal Government may by notification in the official Gazette, specify.

Financial period

Section 2(32)

“financial period” in relation to a company or any other body corporate, means the period (other than financial year) in respect of which any financial statements thereof are required to be made pursuant to this Ordinance.

Financial statements

Section 2 (33)

“Financial statements” in relation to a company, includes:

- (a) a statement of financial position as at the end of the period;

- (b) a statement of profit or loss and other comprehensive income or in the case of a company carrying on any activity not for profit, an income and expenditure statement for the period;
- (c) a statement of changes in equity for the period;
- (d) a statement of cash flows for the period;
- (e) notes, comprising a summary of significant accounting policies and other explanatory information;
- (f) comparative information in respect of the preceding period; and
- (g) any other statement as may be prescribed.

Foreign company

Section 2 (35)

“foreign company” means any company or body corporate incorporated outside Pakistan which:

- (a) has a place of business or liaison office in Pakistan whether by itself or through an agent, physically or through electronic mode; and
- (b) conducts any business activity in Pakistan in any other manner as may be specified.

Net worth

Section 2 (43)

“Net worth” means the amount by which total assets exceed total liabilities.

Postal ballot

Section 2 (47)

“Postal ballot” means voting by post or through any electronic mode.

Provided that voting through postal ballot shall be subject to the provision in the articles of association of

a company, save as otherwise provided in this Ordinance.

Prescribed

Section 2 (48)

"Prescribed" means prescribed by rules made by the concerned Minister-in-Charge of the Federal Government under this Ordinance.

Definition in repealed Ordinance

"Prescribed" means:

- (a) as respects the provisions of this Ordinance relating to the winding up of companies and other matters requiring to be determined or decided by the Court, prescribed by rules made by the Supreme Court in consultation with the High Courts or, where the Supreme Court advises the Federal Government to do so, by the Federal Government in consultation with the High Courts; and
- (b) as respects the other provisions of this Ordinance, prescribed by rules or regulations made by the Federal Government [or the Commission as the case may be] after previous publication in the official Gazette.

Promoter

Section 2 (50)

"promoter" means a person:

- (a) who is named as a subscriber to the memorandum of association of a company;
- (b) who has been named as such in a prospectus;
- (c) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; and

- (d) in accordance with whose advice, directions or instructions the Board of the company is accustomed to act.

Provided that nothing in sub-clause (d) shall apply to a person who is acting merely in a professional capacity;

Provided further that nothing contained in sub-clause (d) shall apply to the Commission, registrar or any authorised officer by virtue of enforcement or regulation of the provisions of this Act or any rules, regulations, instructions, directions, orders thereof.

Public sector company

Section 2(54)

"Public sector company" means a company, whether public or private, which is directly or indirectly controlled, beneficially owned or not less than fifty-one percent of the voting securities or voting power of which are held by the Government or any agency of the Government or a statutory body, or in respect of which the Government or any agency of the Government or a statutory body, has otherwise power to elect, nominate or appoint majority of its directors and includes a public sector association not for profit, licensed under section 42.

Provided that nomination of directors by the Commission on the Board of the securities exchange or any other entity or operation of any other law shall not make it a public sector company.

Redeemable capital

Section 2 (55)

The definition amended to included Sukuks and other forms of finances.

Shariah compliant company

Section 2(64)

"Shariah compliant company" means a company which is conducting its business according to the principles of Shariah.

Subsidiary company

Section 2 (68)

The definition of ‘Subsidiary’ has been elaborated by specifying direct or indirect holding. Indirect holding has been specified to be with one or more of its subsidiary companies.

Previously subsidiary was defined where the holding company directly or indirectly controlled more than fifty percent of its voting securities or had power to elect and appoint more than fifty percent of its directors.

“subsidiary company” or “subsidiary”, in relation to any other company (that is to say the holding company), means a company in which the holding company:

- (a) controls the composition of the Board; or
- (b) exercises or controls more than one-half of its voting securities either by itself or together with one or more of its subsidiary companies.

Provided that such class or classes of holding companies shall not have layers of subsidiaries beyond such numbers, as may be notified.

Explanation - For the purposes of this clause:

- (i) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (a) or sub-clause (b) is of another subsidiary company of the holding company;
- (ii) the composition of a company's Board shall be deemed to be controlled by another company if that other company by exercise of power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
- (iii) the expression “company” includes anybody corporate;
- (iv) “layer” in relation to a holding company means its subsidiary or subsidiaries.

Turnover

Section 2(70)

"turnover" means the aggregate value of sale, supply or distribution of goods or on account of services rendered, or both, net of discounts. If any, held by the company during a financial year.

Voting right

Section 2 (73)

This is added to introduce the concept of e voting through video link.

“voting right” means the right of a member of a company to vote on any matter in a meeting of the company either present in person or through video link or by proxy or by means of postal ballot.

Provided that attending of meeting through video-link shall be subject to such facility arranged by the company and in the manner as may be specified, save as otherwise provided in this Ordinance.

Non-trading companies with purely provincial objects

Section 3

The Ordinance shall apply to non-trading companies objects of which are confined to a single province. The powers conferred on the Minister Incharge of the Federal Government or Commission may be exercised by the Minister Incharge of the provincial government.

In the event if a non-trading company formed on above basis extends its activities beyond the territorial limits of the respective provinces then it will attract penal provision under the Ordinance.

PART II - JURISDICTION OF COURT

Jurisdiction of the Court and creation of Benches

Section 5

The jurisdiction of the court has been simplified and reinforced. No Civil Court or any other Court shall have Jurisdiction to entertain any suit or proceeding respect of any matter which the High Court having jurisdiction in the places at which the registered office of the Company is situated is empowered to determine.

There shall be in each High Court, one or more benches, each to be known as Company Bench. Also a new provision has been added to provide the office of ‘Registrar of the Company Bench’ in each of the High Courts.

The new provision relating to **Registrar** is reproduced below:

- (5) *There shall be a Registrar to be known as “Registrar of the Company Bench” duly notified by the Chief Justice of the respective High Court who shall be assisted by such other officers as may be assigned by the Chief Justice of the respective High Court.*
- (6) *The Registrar of Company Bench shall perform all the functions assigned to it under this Ordinance including all ministerial and administrative business of the Company Bench such as receipt of petitions, applications, written replies, issuance of notices, service of summons and such other functions or duties as may be prescribed under section 423.*
- (7) *The Chief Justice of respective High Courts, if deemed appropriate, may also establish a Secretariat in each Company Bench of the respective High Court in such form and manner to provide secretarial support and to perform such functions as may be prescribed under section 423.*

Procedure of the Court and appeal

Section 6

Detailed procedure of filing of written submissions to the Court under this Ordinance has been laid down.

Such written submission shall be filed with the Registrar of Company Bench.

No adjournment shall be granted once the Court has fixed a date of hearing except in exceptional circumstance beyond the control of the party.

The petition proceeded before the court shall be decided within a period of 120 days (extended from 90 days in the repealed Ordinance).

The provisions of the Qanun-e-Shahdat Order 1984 and the Code of Civil Procedure, 1908 shall not apply to the proceedings, except to such extent as the Court may determine in its discretion.

Any person aggrieved by any judgment or final order of the Court may, file a petition for leave of appeal in the Supreme Court within 60 days.

Prohibition of certain names and mentioning of old name

Section 10

Enabling provision has been added empowering the Commission to restrict the use of any word or expression in the name of a company. Registrar can also reject or change any name if it is identical with or resembles too closely to the name of a company; inappropriate; undesirable; deceptive; or designed to exploit or offend the religious susceptibilities of the people.

A name of the Company shall be deemed deceptive if it does not commensurate with its principal line of business. No Company shall be registered by a name which contains any words which suggest the establishment of a modaraba management company or to float a modaraba or any other business requiring license from the commission without such license.

An enabling provision is also introduced for the reservation of a name for a period of 60 days.

Section 11

The time period for rectification of name has been reduced from 30 days to 21 days.

Section 13

The time frame for mentioning the old name with the new name has been reduced from 1 year to 3 months.

Mode of forming a company

Section 14

- Three or more persons may form a public company
- Two or more persons may form a private company
- One person may form a single member company.

A company formed may be a company with or without limited liability, that is:

- (a) a company limited by shares;
- (b) company limited by guarantee; or
- (c) an unlimited company.

Registration of memorandum and Articles

Section 16

The section has been redrafted to include and combine all matters relating to filing and registration of memorandum & articles, certificate of incorporation and its effects etc.

A new subsection introduced to allow a period of 30 days to appeal against a refusal order for registration of the memorandum.

Section 17

All money payable by a subscriber in pursuance of his undertaking in the memorandum of association against the shares subscribed shall be payable in cash within 30 days from the date of incorporation of the company. The same shall be informed to the registrar with 45 days from the date of incorporation accompanied by a certificate by a practicing chartered accountant or a cost and management accountant verifying the receipt of money so subscribed.

Commencement of business by a public company

Section 19

In this section following changes are incorporated:

- The word “debenture” is deleted since the company cannot exercise borrowing powers unless the requirement for the commencement of business are complied.
- The requirement of minimum subscription has been explained as follows:

“Minimum subscription”, means the amount, if any, fixed by the memorandum or articles of association as minimum subscription upon which the directors may proceed to allotment or if no amount is so fixed and specified, the whole amount of the share capital other than that issued or agreed to be issued as paid up otherwise than in cash.”

REGISTERED OFFICE, PUBLICATION OF NAME

Section 21

Time frame for reporting the change in registered office has been reduced to 15 days from 28 days.

Publication of name by a company

Section 22

The requirement of mentioning telephone number, fax number, email and website address on letterhead and, all its documents, notices and other official publications have been added along with the display of certified copy of certificate of incorporation at every place of business.

Principal line of business

Sections 26 to 29

Companies are allowed to undertake all lawful businesses except restricted and the prohibited businesses. A concept of **principal line of business** is also introduced in section 26 and that it should always **commensurate with the name** of the company. The existing companies shall continue with their existing memorandum of association and the object stated at serial number 1 of the object clause shall be treated as the principal line of business.

If the object stated at serial number 1 of the object clause is not the principal line of business of the company, all such companies shall be required to intimate to the registrar their principal line of business within such time from the commencement of this Ordinance and on the form as may be specified. A copy of the revised memorandum of association mentioning the principal business at serial number 1 of the object clause shall also be furnished to the Registrar.

The existing companies or the companies to be formed to carry on or engage in any business which is subject to a licence or registration, permission or approval shall mention the businesses as required under the respective law and the rules and regulations made thereunder.

ASSOCIATIONS NOT FOR PROFIT

Sections 42 to 44

New requirements are as follows:

- ✓ that the company's objects and activities shall not be against the laws, public order, security, sovereignty and national interests of Pakistan;
- ✓ a separate format for the association to be licenced under this section has been prescribed;
- ✓ Grounds for revocation of licence added.

New sections have been included which describe the effects of revocation of license and penal provisions.

Conversion of Companies

Sections 46 to 50

The process for conversion from public to private, private to single member company, unlimited to limited liability, limited by guarantee to limited by shares and vice versa, for each of the categories has been set out in detail in these sections. Such conversion require the Company to pass a special resolution and seek prior approval of the Commission.

Service of documents on Commission, Registrar, Company and Member

Sections 53 to 55

Courier service and electronic means have been added as the mode of service, as well as the enabling provision empowering the Commission to prescribe any other manner is also included.

The provision relating to service of notice through advertisement in newspaper has been abolished to facilitate corporate sector.

Repayment of money received for shares not allotted

Section 68

The provision has been simplified and the time frame for the refund of money will be specified through regulations.

Previously, the company was required to take a decision within ten days of the closure of the subscription lists as to what applications have been accepted and refund the money within ten days of the date of such decision.

The rate of surcharge has been enhanced from 1.5 % to 2 % per month, in case the refund is not made within the stipulated time.

Return as to allotments

Section 70

The time period for filing of return of allotment to the Registrar has been increased from 30 days to 45 days.

New requirement of filing a report from the auditors (or a practicing chartered accountant or a cost and management accountant in case where appointment of auditor is not mandatory) to the effect that the consideration has been received and share certificate issued has been added.

The procedure of filing the return of allotment for issues of shares for consideration other than cash has been simplified.

Time for issue of certificates

Section 71

Every company shall issue shares within thirty days after the allotment of any of its shares, or other securities and ensure delivery of the certificates to the person entitled thereto at his registered address.

In previous Ordinance, the time period for issue of certificates was 90 days.

Shares in book-entry form only

Section 72

A company having share capital, shall have shares in bookentry form only. Existing company shall replace its physical shares with bookentry form within 4 years from the commencement of this Ordinance. The

Commission may, extend the period for another 2 years.

Duplicate certificates

Section 73

The time for issuance of a duplicate certificate has been reduced from 45 to 30 days and for conveying the reasons of not issuing the duplicate certificate reduced to 20 days. The Company has the liberty to charge fee and actual expenses incurred on such enquiry.

Transfer

Section 74, 75 and 77

The time period for transfer of shares is reduced from 45 to 15 days. In case of conversion into book-entry form, the company shall, register such transfer in the name of the central depository, within ten days of application.

Time frame for notifying the defect in the transfer application / transfer deed has been reduced from 30 to 15 days.

Time frame for notifying the refusal to transfer application / transfer deed has been reduced from 30 to 15 days.

Transfer of shares by the members of a private company

Section 76

- (1) A member of a private company desirous to sell any shares held by him shall intimate to the Board his intention through a notice.
- (2) On receipt of such notice, the Board, within a period of ten days, shall offer those shares for sale to the members in proportion to their existing shareholding.
- (3) The letter of offer for sale specifying the number of shares to which the member is entitled, price per

share and limiting a time, within which the offer, if not accepted, be deemed as declined, shall be dispatched to the members through registered post or courier or through electronic mode.

- (4) If the whole or any part of the shares offered is declined or is not taken, the Board may offer such shares to the other members in proportion to their shareholding.
- (5) If all the members refuse to accept the offer or if any shares are left over, the shares may be sold to any other person as determined by the member, who initiated the offer.
- (6) For the purpose of this section, the mechanism /to determine the price of shares shall be such, as may be specified.

Transfer to nominee of a deceased member

Section 79

The provision has been amended according to Islamic law.

A person may on acquiring interest in a company as member, represented by shares, at any time after acquisition of such interest deposit with the company a nomination conferring on a person the right to protect the interest of the legal heirs in the shares of the deceased in the event of his death, as a trustee and to facilitate the transfer of shares to the legal heirs of the deceased subject to succession to be determined under the Islamic law of inheritance and in case of a non-Muslim members, as per their respective law. The person nominated under this section shall, after the death of the member, be deemed as a member of company till the shares are transferred to the legal heirs and if the deceased was a director of the company, not being a listed company, the nominee shall also act as director of the company to protect the interest of the legal heirs. The person to be nominated shall not be a person other than the relatives of the member, namely, a spouse, father, mother, brother, sister and son or daughter. The nomination in no way prejudice the right of the member making the nomination to transfer, dispose of

or otherwise deal in the shares owned by him during his lifetime and shall have effect in respect of the shares owned by the said member on the day of his death.

Previously, as per section 80 of the repealed Companies Ordinance, 1984, a member represented by shares, at any time after acquisition of such interest deposit with the company a nomination conferring on one or more persons the right to acquire the interest in the shares therein specified in the event of his death. Where a member nominates more than one person, he shall specify in the nomination the extent of right conferred upon each of the nominees, so however that the number of shares therein specified are possible of ascertainment in whole numbers.

Application of premium received on issue of shares

Section 81

Previously, premium can be applied by the Company in writing off the expenses or the commission paid or discount allowed on issue of debentures, or premium payable on redemption thereof. Now it is restricted only to issue of shares.

Issue of shares at a discount

Section 82

The issue of shares at a discount must be authorised by special resolution passed in the general meeting of the company. The resolution must specify the number of shares to be issued, rate of discount, and price per share.

In case of listed companies discount shall only be allowed if the market price is lower than the par value of the shares for a continuous period of past ninety trading days immediately preceding the date of announcement by the Board; and the issue of shares at discount must be sanctioned by the Commission. No approval of Commission is required for a discount up to 10%.

Further issue of capital

Section 83

Minimum and maximum time frame for the acceptance of offer has been prescribed i.e. 15 and 30 days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined.

In case of listed company, the member not interested to subscribe, may exercise the right to renounce the shares offered to him in favour of any other person, before the date of expiry stated in the letter of offer.

If the shares offered are not subscribed, the directors may allot such shares in such manner as they may deem fit, within a period of thirty days from the close of the offer.

Allotment other than right shares for cash or consideration other than cash to be made on the basis of special resolution. Value of non-cash asset shall be determined by a valuer registered with the Commission.

Enabling provision has been inserted for conversion of loan of the Federal Government given to a public sector company into shares in that company.

Prohibition on acceptance of deposits from public

Section 84

Except for the Specialized Companies (banking company etc.) the invitation and acceptance of deposits shall be prohibited. Deposit means any deposit of money and any amount borrowed by a company, but shall not include a loan raised by issue of debentures or a loan obtained from a banking company or financial institution.

Alteration of share capital

Section 85

Condition of a special resolution to increase / consolidate / divide share has been added.

Requirement to register a mortgage or charge

Section 100

A company that creates a charge must file the particulars together with a copy of instrument, with the registrar for registration within a period of 30 days after the date of its creation (previously it was 21 days).

Registration of appointment of receiver or manager

Section 113

- (1) Where in order to ensure enforcement of security of a company's property, a person obtains an order for the appointment of a receiver or manager, or appoints such a receiver or manager under any powers contained in any instrument, he shall within seven days of the order or of the appointment under the powers contained in the instrument, file a notice of the fact with the registrar. (Previously, the time period was within 15 days).
- (2) Where a person appointed as a receiver or manager under this section ceases to act as such, the person who had obtained the order or appointed such a receiver or manager pursuant to the powers contained in any instrument shall on ceasing of the receiver or manager, give the registrar a notice to that effect within seven days. (Previously, the time period was within 15 days)

PART VII - MANAGEMENT AND ADMINISTRATION

Section 118

A complete and comprehensive definition of “member” has been added in the main statute, with clarity that on the registration of a company, the subscribers of the memorandum shall become its members.

Index of Members and debenture-holders

Section 122 and 123

Separate sections have been added to maintain the index of members and debenture-holders.

Power to close register

Section 125

No substantial amendment has been made in the section from old section 151. However requirement for advertisement for publication of notice for closure of register of members for companies other than listed companies have been removed while retaining a requirement for service of notice to that effect. Moreover, the period of closure of register has been stated not exceeding whole thirty days in each year with further period of fifteen days to be allowed by the Commission on application of the Company.

Punishment for fraudulent entries in and omission from register

Section 127

No substantial changes made except for extension in term of imprisonment from one year to three years and fine amount extended from ten thousand rupees to one million rupees.

Annual return

Section 130

Previously listed companies were required to submit annual return containing specified particulars within forty five days from the date of annual general meeting with further extension of fifteen days on application made by company to registrar. However, in revised Ordinance, a time period for filing of return is reduced to thirty days from the date of annual general meeting. Further exemption from filing of annual return is provided to private companies having paid up capital not more than one million rupees and single member company unless there is a change in the membership or directorship.

MEETINGS AND PROCEEDINGS

Statutory meeting

Section 131

Amendment has been made with respect to calling of statutory meeting of a public company having share capital. Now such meeting be conveyed within a period of six months from the date at which company is entitled to commence business or within nine months from the date of its incorporation whichever is earlier. Where annual general meeting of a company is decided to be held earlier no statutory meeting shall be required. Further statutory report to require to be certified by the Chief Executive Officer, at least one Director and in case of listed company also by the Chief Financial Officer.

Annual general meeting (AGM)

Sections 132, 133 and 134

Now within period of sixteen months from the date of its incorporation company is required to hold an annual general meeting. Previously it was required to be held within a period of eighteen months from the date of its incorporation. However, requirement of holding an annual general meeting not more than fifteen months after the holding of its last preceding annual general meeting is no longer mentioned. Further single

member company is exempted from requirements to hold annual general meeting.

Previously it was expressly stated that notice of an extraordinary general meeting be sent to the members at least twenty one days before the date of the meeting and in case of an emergency affecting the business of the company, the registrar on application of directors authorize such meeting be held at such shorter notice as specified. However, such requirement is no longer mentioned. Further for companies other than listed companies if all members entitled to attend and vote at any extra ordinary general meeting so agree a meeting may be held at a shorter notice.

The AGM can now be held in the city nearest to the city in which the registered office is situated. In case of listed companies, if members holding ten percent of capital, are resident in any other city, the company shall provide the facility of video-link to such members for attending AGM. The request for the same shall be received 7 days before the date of the meeting. A notice issued for the AGM should specify the option of video-link to such members.

On a poll, votes may be given either personally or through video-link or by proxy or through postal ballot.

The person attending the meeting through video link is to be counted for the purpose of quorum.

Demand for poll

Sections 143 and 144

Before or on the declaration of the result of the voting on any resolution on a show of hands, a poll may be ordered by the chairman or on a demand by the members present in person or through video-link or by proxy, where allowed, and having not less than one-tenth of the total voting power. When a poll is demanded it may be ordered to be taken by the chairman of the meeting by secret ballot.

Resolution through circulation

Sections 149

By Members

Members of a private company or a public unlisted company (having not more than fifty members), may pass a resolution (ordinary or special) by circulation signed by all members for the time being entitled to received notice of a meeting.

Provided the resolution has been circulated, together with the necessary papers to all the members. A members' agreement to a resolution may not be revoked.

Such resolution be passed for any business (ordinary or special) other than:

- the consideration of financial statements and the reports of the Board and auditors;
- the declaration of any dividend;
- the election and appointment of directors in place of those retiring; and
- the appointment of the auditors and fixation of their remuneration.

Sections 179

By Directors

A resolution in writing signed by all the directors or the committee of directors entitled to receive notice of a meeting of the directors or committee of directors shall be as valid and effectual as if it had been passed at a meeting of the directors or the committee of directors duly convened and held.

Records of resolutions and meetings

Section 151

A requirement is inserted to keep records of copies of all resolutions of members passed otherwise than at general meetings and minutes of all proceedings of general meetings along with the names of participants

from the date of resolution, meeting or decisions simultaneously in physical as well as electronic form and preserved for at least twenty years in physical form and permanently in electronic form.

Ineligibility of certain persons to become director

Section 153

Mandatory requirement to have NTN for a director has been included.

Securities and Exchange Commission of Pakistan via Circular 35 / 2016 dated 18 November 2016 granted a general exemption to promoters who are desirous of forming Small Size Companies as defined under the Third Schedule to Companies Ordinance, 2016 and Agriculture Promotion Companies formed in term of Section 457 of the Ordinance from the requirement of NTN for the period of two years.

Number of directorships

Section 155

A new section has been added which places restriction on holding number of directorships in not more than seven listed companies. A person who is a director in more than seven companies shall ensure the compliance within one year.

Casual vacancy of director in case of listed company should be filled within 90 days.

Compliance with the Code of Corporate Governance

Section 156

The Commission may provide for framework to ensure good corporate governance practices, compliance and matters incidental and auxiliary for companies or class of companies in a manner as may be specified.

Powers of the Court to declare election of directors invalid

Section 160

The requirements have been made stringent. Previously 20 % of voting power was required. This has been substituted by 10 % as follows:

The Court may, on the application of members holding ten percent of the voting power in the company, made within thirty days of the date of election, declare election of all directors or any one or more of them invalid if it is satisfied that there has been material irregularity in the holding of the elections and matters incidental or relating thereto.

Fresh election of directors in case of unlisted companies

Section 162

A member having acquired, after the election of directors, the requisite shareholding to get him elected as a director on the Board of a company not being a listed company, may require the company to hold fresh election of directors.

The Board shall within 1 month of receipt of requisition, proceed to hold fresh election of directors of the company.

Nominee directors

Sections 164 and 165

A new provision has been added, empowering the Federal Government or the Provincial Government to nominate the directors on the Board of companies, to whom such government has extended credit facility.

Further, the Federal Government, Provincial Government, or the Commission have been empowered to nominate the directors in proportion to their investment without contesting the election.

Manner of selection of independent directors

Section 166

A new provision has been added, whereby an independent director is required to be selected from a data bank (containing names, addresses and qualifications of persons eligible and willing to act as independent directors). The data bank will be maintained by any institute, body or association as notified by the Commission. However, the responsibility of exercising due diligence before selecting a person from the data bank shall lie with the company.

The independent director shall be elected in the same manner as the other directors are elected and the statement of material facts annexed to the notice of the general meeting called for the purpose shall indicate the justification for choosing the appointee for appointment as independent director.

No individual shall be selected for the data bank without his consent in writing.

Definition of independent director

Section 166

A new **definition of independent director** has been included. This was previously included in the Code of Corporate Governance.

An independent director means a director who is not connected or does not have any other relationship, whether pecuniary or otherwise, with the company, its associated companies, subsidiaries, holding company or directors; and he can be reasonably perceived as being able to exercise independent business judgment without being subservient to any form of conflict of interest. No director shall be considered independent if one or more of the following circumstances exist:

- he has been an employee of the company, any of its subsidiaries or holding company within the last three years;

- he is or has been the CEO of subsidiaries, associated company, associated undertaking or holding company in the last three years;
- he has, or has had within the last three years, a material business relationship with the company either directly, or indirectly as a partner, major shareholder or director of a body that has such a relationship with the company. The major shareholder means a person who, individually or in concert with his family or as part of a group, holds 10% or more shares having voting rights in the paid-up capital of the company;
- he has received remuneration in the three years preceding his appointment as a director or receives additional remuneration, excluding retirement benefits from the company apart from a director's fee or has participated in the company's stock option or a performance-related pay scheme;
- he is a close relative of the company's promoters, directors or major shareholders. Close relative means spouse(s), lineal ascendants and descendants and siblings;
- he holds cross-directorships or has significant links with other directors through involvement in other companies or bodies not being the associations licenced under section 42;
- he has served on the Board for more than three consecutive terms from the date of his first appointment provided that such person shall be deemed "independent director" after a lapse of one term.
- a person nominated as a director under sections 164 and 165;

For determining the independence of directors, in respect of public sector companies the time period shall be taken as two years instead of three years (employee, CEO and mutual business relationship). An independent director in case of Public Sector Company shall not be in the service of Pakistan or of any

statutory body or anybody or institution owned or controlled of the Government.

Vacation of office by directors

Section 171

This section has been amended and a director shall cease to hold office if he absents himself from three consecutive meetings of the Board without seeking leave of absence.

DISQUALIFICATION OF DIRECTORS BY THE COMMISSION

Section 172

A new section according to which the Commission may make against a person a disqualification order to hold the office of a director of a public interest company for a period up to five years beginning from the date of order in the following circumstances:

- conviction of an offence in connection with the promotion, formation, management or liquidation of a company, or with the receivership or management of a company's property;
- persistent default in relation to provisions of this Ordinance requiring any return, account or other document to be filed with, delivered or sent, or notice of any matter to be given, to the Commission or the registrar;
- person has been a director of a company which became insolvent at any time provided that order against any such person shall not be made after the end of the period of two years beginning with the day on which the company of which that person is or has been a director became insolvent;
- the business of the company in which he is or has been a director has been conducted to defraud its creditors, members or any other persons or for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members or that the

company was formed for any fraudulent or unlawful purpose; or

- the person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance, breach of trust or other misconduct towards the company or towards any of its member; or
- the affairs of the company of which he is a director have been conducted in a manner which has deprived the shareholders thereof of a reasonable return; or
- the person has been convicted of allotment of shares of a company for inadequate consideration; or
- the person is involved in illegal deposit taking; or
- the person has been convicted of financial irregularities or malpractices in a company; or
- the company of which he is a director has acted against the interests of the sovereignty and integrity of Pakistan, the security of the State, friendly relations with foreign States; or
- the company of which he is a director refuse to act according to the requirements of the memorandum or articles or the provisions of this Ordinance or fail to carry out the directions of the Commission given in the exercise of powers under this Ordinance; or
- the person is convicted of insider trading or market manipulation practices; or
- the person has entered into a plea bargain arrangement with the National Accountability Bureau or any other regulatory body;
- the person has been declared a defaulter by the securities exchange;
- that it is expedient in the public interest so to do.

Personal liability for company's debts where person acts while disqualified

Section 173

To provide that a person is personally responsible for all the relevant debts of the Company, if at any time, he is involved in the management of the Company in contravention of a disqualification order or if he acts upon the information of a person, who is subject to disqualification order.

Minutes

A copy of the draft minutes of meeting of Board shall be furnished to every director within **7** working days of the date of meeting. Previously it was **14** working days.

Prohibition on assignment of office by directors

Section 174

For the purpose of fixing the responsibility of violations of laws, the relaxation previously available to a director to assign the office by a special resolution is now deleted.

Quorum

Section 176

This section has been amended to provided that the person attending the Board meeting through video conferencing or by other audio visual means is to be counted for the purposes of quorum.

Furthermore, if at any time, there are not enough directors to form a quorum, all the remaining directors shall be deemed to constitute a quorum

Protection to independent and non-executive directors

Section 181

This new section of protection is inserted to facilitate induction of independent and non-executive directors. This section also defines **non-executive director**. Details are:

Notwithstanding anything contained in this Ordinance, an independent director; and a non-executive director; shall be held liable, only in respect of such acts of omission or commission by a listed company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.

A **nonexecutive director means**, a person on the Board of the company who:

- is not from among the executive management team and may or may not be independent;
- is expected to lend an outside viewpoint to the Board of a company;
- does not undertake to devote his whole working time to the company and not involve in managing the affairs of the company;
- is not a beneficial owner of the company or any of its associated companies or undertakings;
- does not draw any remuneration from the company except the meeting fee.

Loans to directors

Section 182

The whole scheme of law relating to loan to directors has been revised. This is summarised as follows:

A company shall not make a loan to a director of the company or of its holding company; or to any of his relatives; give a guarantee or provide security in

connection with a loan made by any person to such a director; or to any of his relatives (his spouse and minor children) unless the transaction has been approved by a resolution of the members of the company and in case of a listed company it is also approved by the Commission. This is not applicable to a company which in the ordinary course of its business provides loans or gives guarantees or securities.

Powers of Board

Section 183

The powers of the Board which can be exercised by means of a resolution passed in the meeting have been extended to include takeover of a company or acquire a controlling or substantial stake in another company.

Necessary explanations have been added for “undertaking” and “sizeable part” for the sake of clarity.

Restriction for disposal of “undertaking” and “sizeable part” has been added for listed company, from selling or otherwise disposing of the undertaking, which results in or may lead to closure of business operation or winding up of the company, without there being a viable alternate business plan duly authenticated by the Board.

Resolution authorising the Board to do certain acts shall stand lapsed if not implemented within one year.

CHIEF EXECUTIVE

Appointment of chief executive in case of Public Sector Company

Section 186 and 187

Federal government has the power to nominate Chief Executive of a public sector company where majority of directors is nominated by the Federal Government. His term shall also be determined by the Federal government.

The chief executive appointed against the casual vacancy should hold office till director elected in the election appoint a chief executive.

Chairman in a listed company

Section 192

New section has been added in line with the requirement of Code of Corporate Governance requiring the Board of a listed company to appoint a chairman from among the **non-executive directors** within fourteen days from the date of election of directors, who shall hold office for a period of three years unless he earlier resigns, becomes ineligible or disqualified or removed.

The chairman and the chief executive shall not be the same individual except where provided for under any other law. The Board shall clearly define the respective roles and responsibilities of the chairman and chief executive. The chairman shall be responsible for leadership of the Board and ensure that the Board plays an effective role in fulfilling its responsibilities.

Every financial statements circulated shall contain a review report by the chairman on the overall performance of the company and effectiveness of the role played by the Board in achieving the company's objectives.

Public company required to have secretary

Section 194

Requirement for appointing a company secretary has been extended to all public companies instead of listed companies only. SMCs have been exempted from appointing company secretary.

Rights to inspect

Section 198

The section has been further elaborated which empowered the company to fix the fee for inspection

and copy the minutes and other documents instead of its being prescribed by the Commission.

The particulars of applicant and the purpose for which information is to be used should be mentioned in the request made by the applicant.

Investments in associated companies and undertaking

Section 199

The provisions of section 208 of the Repealed Companies Ordinance, 1984, have been modified and the terms and conditions have been expanded to include due diligence and certification by Directors in addition to the requirement of authority of special resolution. The section also provides requirement of special resolution in case of increase in the amount or any change in the nature of Investment or the terms and conditions.

Duties of directors

Section 204

New section has been added, setting out roles and responsibilities of the directors. A director shall:

- act in accordance with the articles of the company;
- act in good faith in order to promote the objects of the company for the benefit of its members and in the best interests of the company, its employees the shareholders, the community and for the protection of environment;
- discharge his duties with due and reasonable care, skill and diligence and shall exercise independent judgment;
- not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company;
- not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found

guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company; and

- not assign his office and any assignment so made shall be void.

This section also empowers Commission to provide for the extent of duties and the role of directors as may be specified.

Disclosure of interest by director

Section 205

The previous section has been revised with an additional explanation for “director’s relative” added. These are director’s spouse, children, including the step children; and parents.

Interested director not to participate or vote in proceedings of Board

Section 207

In case of listed company, the director who has a material personal interest in a matter that is being considered at a Board meeting, shall not be present while that matter is being considered.

If majority of the directors are interested the matter shall be laid before the general meeting for approval.

Related party transactions

Section 208

A new section has been introduced, on lines similar to those contained in Code of Corporate Governance.

The section is summarized below:

A company may enter into any contract or arrangement with a related party only in accordance with the policy approved by the Board, subject to such conditions as may be specified, with respect to:

- sale, purchase or supply of any goods or materials;

- selling or otherwise disposing of, or buying, property of any kind;
- leasing of property of any kind;
- availing or rendering of any services;
- appointment of any agent for purchase or sale of goods, materials, services or property; and
- such related party's appointment to any office or place of profit in the company, its subsidiary company or associated company;

If majority of the directors are interested in any of the above transactions, the matter shall be placed before the general meeting for approval as special resolution:

This is not applicable in respect of transactions entered into by the company in its ordinary course of business on an arm's length basis.

Explanations — in this sub-section:

the expression “**office of profit**” means any office: where such office is:

- held by a director, if the director holding it receives from the company anything by way of remuneration over and above the remuneration to which he is entitled as director, by way of salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;
- held by an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it receives from the company anything by way of remuneration, salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

The expression “**arm's length transaction**” means a transaction which is subject to such terms and conditions as may be specified.

The expression “**related party**” includes:

- a director or his relative;
- a key managerial personnel or his relative;
- a firm, in which a director, manager or his relative is a partner;
- a private company in which a director or manager is a member or director;
- a public company in which a director or manager is a director or holds along with his relatives, any shares of its paid up share capital;
- anybody corporate whose Board chief executive or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager (other than given in a professional capacity);
- any person on whose advice, directions or instructions (other than given in a professional capacity) a director or manager is accustomed to act;
- any company which is a holding, subsidiary or an associated company of such company; or a subsidiary of a holding company to which it is also a subsidiary;
- such other person as may be specified;

“**relative**” means spouse, siblings and lineal ascendants and descendants of a person.

Every contract or arrangement entered into under sub-section (1) shall be referred to in the Board's report to the shareholders along with the justification for entering into such contract or arrangement.

The Commission may specify the record to be maintained by the company with regards to transactions undertaken with the related party.

Where any contract or arrangement is entered into by a director or any other employee, without obtaining the

consent of the Board or approval by a special resolution in the general meeting and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into, such contract or arrangement shall be voidable at the option of the Board and if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it.

It shall be open to the company to proceed against a director or any other employee who had entered into such contract or arrangement in contravention of the provisions of this section for recovery of any loss sustained by it as a result of such contract or arrangement.

Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall be liable to:

- in case of **listed company**, be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than five million rupees, or with both; and
- in case of any **other company**, to a penalty of level 2 on the standard scale.

Register of contracts or arrangements in which directors are interested

Section 209

The existing provision of law has been amended so that all the required information for the purpose of register to be maintained under this section should be specified through regulations.

Contract of employment with directors

Section 210

New section has been added which requires maintaining the contracts of employment of director and such contracts will be open for members' inspection.

Restriction on non-cash transactions involving directors

Section 211

Restriction imposed on company from selling or purchasing any asset from / to a director or a connected person for a consideration other than cash, without prior approval of members.

The details are:

No company shall enter into an arrangement by which:

- a director of the company or its holding, subsidiary or associated company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the company; or
- the company acquires or is to acquire assets for consideration other than cash, from such director or person so connected;

unless prior approval for such arrangement is accorded by a resolution of the company in general meeting and if the director or connected person is a director of its holding company, approval under this sub-section shall also be required to be obtained by passing a resolution in general meeting of the holding company.

The notice for approval of the resolution by the company or holding company in general meeting shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer.

Any arrangement entered into by a company or its holding company in contravention of the provisions of this section shall be voidable at the instance of the company unless:

- the restitution of any money or other consideration which is the subject-matter of the arrangement is no longer possible and the company has been indemnified by any other person for any loss or damage caused to it; or
- any rights are acquired bona fide for value and without notice of the contravention of the provisions of this section by any other person.

Disclosure to members of directors' interest in contract appointing chief executive or secretary

Section 213

This Section has been simplified and stated with clarity with the condition that the interested director shall not participate or vote in the proceedings of the directors held for the purpose of appointment of CEO / directors etc.

Liability for undesired activities of the shareholders

Section 215

This section is inserted to prescribe the **Code of conduct for the members** with level 1 penalty for non-compliance. Details are as follows:

A member of a company shall act in good faith while exercising its powers as a shareholder at the general meetings and shall consider the benefit of all the members as a whole and in the best interests of the company and for the protection of environment.

A member of the Company shall not exert influence or approach the management directly for decisions which are oppressive in nature or may lead to create hurdle in the smooth functioning of management.

Company deemed to be a public interest company in certain circumstances

Section 216

A company shall be deemed to be a company with public interest, if its ordinary shares are owned by such number of persons as may be specified and whose assets exceed the value specified.

The Commission may by an order in writing exempt such company from the requirements if the Commission determines that such exemption is in the interest of the public. Provided that such order shall be posted on the official website of the Commission.

Employees' provident funds, contributory retirement funds and securities

Section 218

This scope of this section has been extended to include the contributory pension fund and other contributory retirement funds.

Financial Statements

Section 223

The first financial statement must be laid at the AGM within 16 months (previously 18 months) from the date of incorporation of the company, thereafter, within 4 months following the close of financial year. This can be extended the 30 days by Commission for listed company and in any other case by the registrar.

The condition for audit is not applicable to a private company having the paid up capital not exceeding one million rupees or such other amount of paid up capital as may be notified.

For a listed company, the provision for sending the financial statements electronically and posting it on Company's website have been added.

Exemption is given to a single member company.

Classification of Companies

Section 224

The companies are classified into different categories as specified in the Third Schedule. The schedule also lays down the applicable financial reporting framework for each category.

Contents of Financial Statements

Section 225

The powers of the Federal Government in respect of modification of relevant Schedule for the purpose of adapting it to the circumstances of a company has now been transferred to Commission.

The companies have been allowed to prepare the financial statements in accordance with IFRS, issued by the IASB.

Duty to prepare directors' report and statement of compliance

Section 226

The Board must prepare a directors' report for each financial year of the company. This shall not apply to a private company having a paid up capital not exceeding three million rupees.

The Commission may by general or special order, direct such class or classes of companies to prepare a statement of compliance.

The Board of a holding company, required to prepare consolidated financial statements, shall make out and attach to consolidated financial statements a report with respect to the consolidated financial statements and all provisions of sub-section (2), (3) and (4) of section 227 shall apply to such report. The directors in their report shall give greater emphasis to the matters that are significant to the undertakings included in the consolidation.

Contents of directors' report and statement of compliance

Section 227

A comprehensive list of matters to be included in director's report has been set out. These are summarized below:

In case of a public company or a private company which is a subsidiary of a public company, the directors report, must state:

- the names of the persons who, at any time during the financial year, were directors of the company;
- the principal activities and the development and performance of the company's business during the financial year;
- a description of the principal risks and uncertainties facing the company;
- any changes that have occurred during the financial year concerning the nature of the business of the company or of its subsidiaries, or any other company in which the company has interest, whether as a member or otherwise;
- the information and explanation in regard to any contents of modification in the auditor's report;
- information about the pattern of holding of the shares in the form specified;
- the name and country of origin of the holding company, if such company is a foreign company;
- the earning per share;
- the reasons for loss if incurred during the year and future prospects of profit, if any;
- information about defaults in payment of any debts and reasons thereof;

- the details in respect of adequacy of internal financial controls;
- any material changes and commitments affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statement relates and the date of the report; and
- any other information as may be specified.

In the case of a **listed company** the business review must, to the extent necessary for an understanding of the development, performance or position of the company's business, include:

- the main trends and factors likely to affect the future development, performance and position of the company's business;
- the impact of the company's business on the environment;
- the activities undertaken by the company with regard to corporate social responsibility during the year;
- directors' responsibility in respect of adequacy of internal financial controls as may be specified.

Consolidated financial statements

Section 228

Exemption is granted to a private company and its subsidiary, where none of the holding and subsidiary company has the paid up capital not exceeding one million rupees.

Further interim financial statements of a subsidiary company prepared in cases where financial year of a subsidiary precedes the day on which the holding company's financial year ends by more than three months, is no longer required to be reviewed by the auditors of that subsidiary.

Financial year of holding company and subsidiary

Section 229

The provision has been simplified with liberty that either the holding company may change its financial year according to subsidiary company and *vice-versa*. Further the Commission has been empowered for ancillary and incidental matters on case to case basis.

Approval and authentication of Financial Statements

Section 232

The financial statements, including consolidated financial statement, if any, must be approved by the Board of the company and signed on behalf of the Board by the chief executive and at least one director of the company, and in case of a listed -company also by the chief financial officer.

In case of a private company having a paid up capital not exceeding one million rupees, the financial statements shall also be accompanied by an affidavit executed by the chief executive if the financial statements are signed by him or by any of the directors if the accounts has been signed by two directors, as the case may be, that the financial statements have been approved by the Board.

This is an additional requirement for a private company since it is exempt from audit of accounts:

Requirement to add a statement with financials that the chief executive is for the time being not in Pakistan has been removed.

The financial statements of a single member company shall be signed by one director. This was missing in the previous law.

Copy of Financial Statements to be forwarded to the registrar

Section 233

The financial statements shall be filed by the company electronically with the registrar within thirty days from the date of such meeting in case of a listed company and within fifteen days in case of any other company. Nothing in this section shall apply to a private company having the paid up capital not exceeding ten million rupees.

Filing of unaudited financial statements

Section 234

The following additional requirement for a private company is included, since it is exempt from audit.

A private company having the paid up capital not exceeding one million rupees or such other amount of paid up capital as may be notified by the Commission, shall file the duly authenticated financial statements, whether audited or not, with the registrar within thirty days from the holding of such meeting.

Surplus on Revaluation of Fixed Assets

Section 235

Section 235 of the repealed Companies Ordinance 1984 ('repealed ordinance') relating to treatment of surplus arising on revaluation of fixed assets has not been carried forward in The Companies Ordinance, 2016. As the said section carried certain accounting treatment relating to revaluation of fixed assets, the affected companies would need to change their accounting policies and account for the change in accordance with IAS 8 – 'Accounting Policies, Changes in Accounting Estimates and Errors'. The required changes are as follows:

- The surplus on revaluation of fixed assets, which was previously disclosed in the balance-sheet of the company after capital and reserves, will now be included as part of equity with corresponding inclusion in statement of changes in equity;

- If an asset's carrying amount is increased as a result of revaluation, the increase will be recognised in other comprehensive income. However, the increase shall be recognised in profit or loss to the extent that it reverses a revaluation decrease of the same asset previously recognised in profit or loss;
- If an asset's carrying amount is decreased as a result of a revaluation, the decrease shall be recognised in profit or loss. However, the decrease shall be recognised in other comprehensive income to the extent of any credit balance existing in the revaluation surplus in respect of that asset. Previously, Section 235 allowed that the surplus on revaluation of fixed assets may be applied by the company in setting off or in diminution of any deficit arising from the revaluation of any other fixed assets of the company.

Quarterly financial statements of listed companies

Section 237

The requirements of code of corporate governance is included in this section.

Every listed company shall prepare the quarterly financial information within the period of,-

- one month of the close of first and third quarters of its year of accounts; and
- two months of the close of its second quarter of its year of accounts:

The quarterly financial statements shall be posted on the company's website and also to be transmitted electronically to the Commission, securities exchange and with the registrar. A copy of the quarterly financial statements shall be dispatched in physical form if so requested by any member without any fee.

The cumulative figures for the half year, shall be subjected to a limited scope review by the statutory auditors of the company.

The Commission may, extend the period of filing in case of accounts of first quarter for a period not exceeding thirty days.

Dividend to be paid only out of profits

Section 241

A new provision has been added whereby companies are allowed to pay the dividends in kind. Any dividend may be paid by a company either in cash or in kind only out of its profits. The payment of dividend in kind shall only be in the shape of shares of listed company held by the distributing company.

Dividend not to be paid except to registered shareholders.

Sections 242 and 243

Member shall have liberty to require payment in any mode including cheques or transfer of money directly into their bank account.

In case of a listed company, any dividend payable in cash shall only be paid through electronic mode directly into the bank account of shareholders.

The Company may withhold the payment of dividend where the member has not provided the complete information (NIC and etc.).

Unclaimed shares, modaraba certificates and dividend to vest with Federal Government

Section 244

New provision has been added to specify that unclaimed shares, modaraba certificates and dividend to vest with Federal Government.

The unclaimed or unpaid amount, shall be maintained in a profit bearing account with the State Bank of Pakistan or National Bank of Pakistan to be called "Companies Unclaimed Instruments and Dividend and Insurance Benefits and Investors Education Account"

as may be notified by the Federal Government and shall be deemed to be part of public accounts and interest / profit accumulated thereon shall be credited on quarterly basis.

Investor Education and Awareness Fund

Section 245

An Investor Education and Awareness Fund ("Fund") to be managed and controlled by the Commission as may be prescribed through rules is to be established.

The Fund shall be credited with:

- the interest/profit earned on the "Companies Unclaimed Instruments and Dividend and Insurance Benefits and Investors Education Account"; Every company within thirty days of the close of each financial year shall submit to the Commission a return of all unclaimed items;
- forfeited amounts under sub-section (7) of section 87 of the Securities Act, 2015;
- grants or donations given by the Federal Government, Provincial Governments, companies, or any other institution or person for the purposes of the Fund;
- the interest or other income received out of the investments made from the Fund;
- the amount realised in terms of fourth proviso of section 341 or fourth proviso of sub-section (4) of section 372; and
- such other amounts as may be prescribed.

The Fund shall be utilized for:

- the promotion of investor education and awareness in such manner as may be prescribed;

- Educational activities including seminars, training, research and publications aimed at investors media – print, electronic, social media, aimed at investors;
- Funding investor education and awareness activities approved by the Commission; and
- To meet the administrative expenses of the Fund.

The Commission shall, constitute an advisory committee, for recommending investor education and awareness activities that may be undertaken for utilization of the Fund.

The accounts of the Fund shall be audited by auditors appointed by the Commission. The Commission shall ensure maintenance of proper and separate accounts.

The Commission may invest the moneys of the Fund in such manner as set out in section 20 of the Trusts Act, 1882 (II of 1882).

AUDIT

Appointment, removal and fee of auditors

Section 246

Time frame for the appointment of first auditor is increased from 60 days to 3 months.

The requirements of sending the representation of retiring auditors, (when they are not proposed to be reelected) to the members has been abolished. Reading of the representation of retiring auditors in the meeting shall serve the purpose.

Time frame of 30 days has been prescribed to fill the casual vacancy of auditor.

In case of removal, the auditor shall only be appointed with the approval of the Commission.

The company shall, within fourteen days from the date of any appointment of an auditor, send an intimation to

the registrar together with the consent in writing of the auditor.

Following additional grounds of **disqualification** have been added:

- a person who has given a guarantee or provided any security in connection with the indebtedness of any third person to the company other than in the ordinary course of business of such entities;
- a person or a firm who, whether directly or indirectly, has business relationship with the company other than in the ordinary course of business of such entities;
- a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction;
- a body corporate;
- a person who is not eligible to act as auditor under the code of ethics as adopted by the Institute of Chartered Accountants of Pakistan and the Institute of Cost and Management Accountants of Pakistan;
- a person who is indebted to the company other than in the ordinary course of business of such entities;

A person who is indebted to the company other than in the ordinary course of business of such entities shall not be deemed indebted to the company if a sum not exceeding one million rupees is owed to a credit card issuer or utility of company in the form of unpaid dues for a period not exceeding ninety days.

RIGHTS OF AUDITOR

Section 248

Additional rights have been given to the auditors to require information from employees and access to the accounts of subsidiary companies and its employees. These are summarized below:

An auditor of a company has a right to require any of the following persons to provide him with such information or explanations as he thinks necessary:

- any director, officer or employee of the company;
- any person holding or accountable for any of the company's books, accounts or vouchers;
- any subsidiary undertaking of the company;
- any officer, employee or auditor of any such subsidiary undertaking of the company or any person holding or accountable for any books, accounts or vouchers of any such subsidiary undertaking of the company.

DUTIES OF AUDITOR

Section 249

A company's auditor, within fourteen days of appointment shall submit a copy of the consent letter, given to the company, to the registrar.

A company's auditor shall conduct the audit and prepare his report in compliance with the requirements of International Standards on Auditing as adopted by the Institute of Chartered Accountants of Pakistan.

Additional requirements - A company's auditor must carry out such examination to enable him to form an opinion as to:

- whether adequate accounting records have been kept by the company and returns adequate for their audit have been received from branches not visited by him; and
- whether the company's financial statements are in agreement with the accounting records and returns.

The auditor shall express unmodified or modified opinion in his report in compliance with the requirements of International Standards on Auditing as

adopted by the Institute of Chartered Accountants of Pakistan.

The Commission may by general or special order, direct, that the statement of compliance, shall be reviewed by the auditor who shall issue a review report to the members on the format specified by the Commission.

Audit of cost accounts

Section 250

The audit of cost accounts shall not be mandatory but shall be directed by the Commission subject to the recommendation of the regulatory authority supervising the business of relevant sector.

Signature of auditor's report

Section 251

The auditor's report must state the name of the auditor, engagement partner, be signed, dated and indicate the place at which it is signed.

If auditor is an individual - the report must be signed by him.

If auditor is a firm - the report must be signed by the partnership firm with the name of the reporting partner.

Penalty for non-compliance with provisions by auditors

Section 253

If any auditor's report or review report is made, or any document of the company is signed or authenticated otherwise than in conformity with the requirements of section 131, sections 249 and 251 or is otherwise untrue or fails to bring out material facts about the affairs of the company or matters to which it purports to relate, the auditor concerned and the person, if any, other than the auditor who signs the report or signs or authenticates the document, and in the case of a firm all partners of the firm, shall be liable to a penalty of

level 2 on the standard scale. (the words 'if the default is wilful' removed)

Seizure of documents by registrar, inspector or investigation officer

Section 255

Commission's powers have been widened by entrusting the Commission the powers of the Magistrate of the First Class or the Court. Registrar, inspector or investigation officer with prior approval of Commission (to be signed by one commissioner) can without warrants, enter such place and cause a search to be made at any time freeze, seize or take possession of and retain any document, object, article, material, thing, account books, movable or immovable property or cause any account, property or thing to be maintained in specific manner.

Such action can be taken when the Registrar, inspector or investigating officer, as the case may be, upon information in his possession or otherwise during investigation has reason to believe that documents books and papers or anything relation to any companies or CEO or officer of such company or any associate of such person or is useful or relevant to any proceedings or investigations under this Ordinance which is required or may be destroyed, mutilated, altered falsified or secreted. Primarily this power can only available in case of information which may be destroyed, mutilated, altered, falsified or secreted.

Serious Fraud Investigation

Section 258

New section has been inserted empowering the Commission to initiate investigation proceedings where it thinks that any fraud or activity is undertaken by a company having serious implications. In this respect certain disciplines have been stated from where the Commission shall appoint inspectors.

Notwithstanding anything contained in sections 256 and 257, the Commission may authorize any one or more of its officers or appoint such number of professionals from amongst the persons of ability,

integrity and having experience in the fields of corporate affairs, accountancy, taxation, forensic audit, capital market, banking, information technology, law or such other fields as may be notified, as an inspector or investigation officer to investigate such serious nature of offences relating to a company as may be specified by the Federal Government in Sixth Schedule from time to time.

The persons appointed as inspectors or investigation officer shall have all powers of investigation officer under this Ordinance, the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997) and Code of Criminal Procedure, 1898 (Act V of 1898), mutatis mutandis and shall report in such manner as the Commission may direct.

Notwithstanding anything contained in this Ordinance or any law, the Commission may, if it is satisfied that a matter is of public importance or it is in the interest of public at large, request the Federal Government to form a Joint Investigation Team to be headed by the senior level officer of the Commission, not below the rank of additional director, and may include any person along with Gazetted officer of any Federal law enforcement agency, bureau or authority for providing assistance in investigating the offence under this section and the direction of the Minister Incharge of the Federal Government under this section shall be binding.

Upon completion of investigation, the Joint Investigation Team shall, through the Special Public Prosecutor, submit a report before the Court.

PART VIII- MEDIATION, ARBITRATION, ARRANGEMENTS AND RECONSTRUCTION

Mediation and Conciliation Panel

Section 276

Commission is empowered to maintain a Mediation and Conciliation Panel consisting of suitably qualified individuals for mediation between the parties for any proceeding under the Ordinance before the

Commission or the Appellate Bench. Relevant parties to proceedings may with mutual consent approach the Commission or Appellate Bench to constitute the panel.

The panel once constituted is required to forward its recommendation to the Commission or Appellate Bench within a period of three months from the date at which the matter was referred to the panel.

Resolution of disputes through mediation

Section 277

A fresh concept of dispute resolution has been introduced and the company, its management or its members or creditors may directly refer relevant matters to any member of the mediation and conciliation panel maintained before taking recourse to formal dispute resolution. This is an enabling provision to allow settlement of disputes through alternative method of mediation.

COMPROMISES, ARRANGEMENTS AND RECONSTRUCTION

Compromise with creditors and members

Section 278

Commission has been given jurisdiction, which was previously with the Court, to approve, compromise, arrangement, reconstruction and amalgamation, consequently requirement for filing of the Sanction order by the Court with the registrar by the Company has been done away with and now this responsibility has been assigned to the officer of the Commission issuing the order.

An application to stay the proceedings can be filed with the Commission and the Court has the powers to stay the commencement or continuation of any suit or proceeding until final disposal of the application.

COMPROMISES, ARRANGEMENTS AND RECONSTRUCTION

Compromise with creditors and members

Section 279

In order to facilitate the corporate sector, the matters to approve compromise, arrangement, reconstruction and amalgamation are being given under the jurisdiction of the Commission (previously under the jurisdiction of Court) for the disposal of such cases in a shortest possible time.

The filing requirements of order by the company has been abolished and responsibility assigned to the order issuing authority. This will facilitate the corporate sector.

Power of Commission to enforce compromises and arrangements

Section 280

Consequent to change in Section 278, functions of the court have been replaced with Commission.

Powers of Commission to facilitate reconstruction or amalgamation of companies

Section 282

The section has been restated to include documents including the scheme, effects of the scheme, swap ratio and report of the expert on valuation, latest financial position of the company to be circulated to the stake holders before convening the meeting in which the scheme is to be considered.

Provisions of law have been simplified along with replacement of functions of court with Commission. SECP is empowered to order a meeting of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held

and conducted in such manner as the Commission may direct. Section also prescribes documents to be circulated in cases of meetings for, merging companies or the company in respect of which a division is proposed.

Where an order has been made by the Commission, merging companies or the company in respect of which a division is proposed, shall also be required to circulate the following for the meeting so ordered by the Commission, namely:

- the draft of the proposed terms of the scheme drawn up and adopted by the Board of each of the applicant companies;
- confirmation that a copy of the draft scheme has been filed with the registrar;
- a report adopted by the Board of the applicant companies explaining effect of compromise on each class of members, laying out in particular the share swap ratio, specifying any special valuation difficulties;
- the report of the expert with regard to valuation, if any;
- a supplementary accounting statement if the last annual accounts of any of the applicant company relate to a financial year ending more than six months before the first meeting of the company summoned for the purposes of approving the scheme.

Amalgamation of wholly owned subsidiaries in holding company

Section 284

New provision added to the law to facilitate the amalgamation of wholly owned subsidiary into its holding company or wholly owned subsidiaries of the same holding company, **without the approval of the Commission** if:

- (a) the scheme of amalgamation is approved by the Board of each amalgamating company; and

(b) each resolution provides that:

- (i) the shares of each transferor company, other than the transferee company, will be cancelled without payment or other consideration; and
- (ii) the Board is satisfied that the transferee company will be able to pay its debts as they fall due during the period of twelve months immediately after the date on which the amalgamation is to become effective and a declaration verified by an affidavit to the effect will be filed with the registrar; and
- (iii) the person or persons named in the resolution will be the director or directors of the transferee company.

Application to Court

Section 286

Required threshold for filing application reduced to 10% from 20%.

Management by Administrator

Section 291

The rights to apply for the appointment of administrator also given to the shareholders in addition to the creditors having equivalent interest.

Rehabilitation of sick public sector companies

Section 292

Scope of the section has been restricted and now only a public sector company can be declared as a sick company by the Federal Government.

PART X – WINDING UP

Preliminary

Definition of “contributory”

Section 296

Definition of contributory simplified and made clear the term “contributory” means a person liable to contribute towards the assets of the company in the event of its being wound up.

Winding up by Court

Section 301 -

Additional provision for winding of a company by the Court has been added. The Court can now order winding up of a company that is in default of filing with the registrar its financial statements or annual returns for immediately preceding two consecutive financial years or if the company has acted against the interest, sovereignty and integrity of Pakistan, the security of the State and friendly relations with foreign States; or if a company ceases to operate consequent upon revocation of its licence.

Court may ascertain wishes of creditors or contributories

Section 314

To ascertain wishes of creditors or contributories the Court can order a meeting and appoint a person to act as chairman of that meeting and submit a report of the same to the Court. Further, weightage to wishes shall now be based on the value of debt and voting power.

Appointment of official liquidator

Section 315

Commission is now required to maintain a panel of provisional manager and official liquidator of a company or a company to be wound up will be appointed. Panel shall consist of chartered accountants, advocates, company secretaries, cost

and management accountants, retired public servants having relevant experience and such other persons as may be specified by the Commission, having at least ten years' professional experience.

Removal of official liquidator

Section 316

New section added containing grounds for removing provisional manager or official liquidator of the company.

The Court may, on a reasonable cause being shown including but not limited to lack of independence or lack of impartiality, remove the provisional manager or the official liquidator, as the case may be, on any of the following grounds, namely:

- a) misconduct;
- b) fraud or misfeasance;
- c) professional incompetence or failure to exercise due care and diligence in performance of the powers and functions;
- d) inability to act as provisional manager or official liquidator, as the case may be;
- e) conflict of interest during the term of his appointment that will justify removal.

Where the Court is of the opinion that any liquidator is responsible for causing any loss or damage to the company due to fraud or misfeasance or failure to exercise due care and diligence in the performance of his powers and functions, the Court may recover or cause to be recovered such loss or damage from the provisional manager or official liquidator, as the case may be, and pass such other orders as it may think fit.

Remuneration of official liquidator

Section 317

Remuneration of liquidator now linked with quantum of work and his expertise.

General provisions as to liquidator

Section 319

Requirement to complete the winding up proceeding by liquidator within one year of the commencement of winding up have been removed. Now winding up is required to be completed within time frame as determined by the Court.

Report by official liquidator

Section 321

Requirement for disclosure of some important information related to nature, details, location and current value of the assets duly ascertained by a registered valuer is added in this section.

Further, official liquidator is now required to report on the viability of the business of the company or the steps which, in his opinion, are necessary for maximizing the value of the assets of the company.

Court directions on report of official liquidator

Section 322

New section added to give power to Court for fixing the time frame to complete the winding up proceedings.

Custody of company's properties

Section 324

The role of District Magistrate has been given to the Court. The liquidator or provisional manager shall on the order of the Court, forthwith take into custody or control all the property, effects and actionable claims of the company.

Power and duties of official liquidator

Section 337

Following additional powers have been given to liquidator:

- to sell whole of the undertaking of the company as a going concern;
- to appoint an Advocate entitled to appear before the Court or such person as may be prescribed to assist him in the performance of his duties.

Liquidator to keep books containing proceedings of meetings

Section 338

This section has been improved to clearly describe the books to be maintained by liquidator.

The official liquidator of a company which is being wound up by the Court shall, in order to reflect a correct and fair view of the administration of the company's affairs, maintain proper books of accounts and also keep the following books:

- (a) register showing the dates at which notices were issued to the creditors and contributories;
- (b) minutes book of all proceedings and resolutions passed at any meeting of the contributories or the creditors;
- (c) register containing particulars of all transactions and negotiations made by him in relation to the winding up of the company and the connected matters.

Liquidator's account

Section 339

New requirement related to review of six monthly receipts and payments by company auditors added in this section.

In case winding up is not concluded within one year annual balance sheet and receipt and payment is required to be audited.

Distribution by official liquidator

Section 341

New proviso related to transfer of assets of association licensed under section 42 added because its assets cannot be distributed to the members. This requires that any assets which remain after the satisfaction of all debts and liabilities, those shall be transferred to another association licensed under section 42 of this Ordinance, preferably having similar or identical objects to those of the association in the manner as may be prescribed and subject to such conditions as the Court may impose.

PROVISIONS APPLICABLE TO MEMBERS' VOLUNTARY WINDING UP

Notice of resolution to wind up voluntarily

Section 350

The notice of resolution to wind up a company voluntarily is required to be published within 10 days in daily newspapers in English and Urdu language having wide circulation atleast in one issue of each. The copy of the same is required to be sent to the registrar immediately.

The requirement has now been simplified and made similar for both the listed and other companies. Earlier the non-listed companies were required to publish the notice in any newspaper circulating in the Province where the registered office of the company is situated. Whereas the listed companies were required to publish the notice in each of English and Urdu language daily newspapers having circulation in the province where the registrar office is situated.

Declaration of solvency

Section 351

Where it is proposed to wind up a company voluntarily, the management along with other declarations which are currently in force will also be required to submit a certificate that the company is not being wound up to defraud any person.

The penalty for making unjustified declaration by any director of a company under this section increased from 6 months imprisonment to one year imprisonment and also the fine is raised from upto PKR 10,000 to upto PKR 500,000.

Appointment of Liquidator

Section 353

In case of members' voluntary winding up, the liquidator can now be removed by the members through resolution in general meeting. Earlier the right to remove the liquidator rested with the Court.

Notice by liquidator of his appointment

Section 355.

Liquidator has now been given the responsibility of filing the notice of his appointment to the Registrar, instead of the company.

Duty of liquidator to call general meetings

Section 358

The liquidator shall summon and hold the AGM within two months from the close of first year after the commencement of winding up.

The documents to lay before the AGM now also include the statement of financial position along with the receipt and payment account, auditors' report and the liquidator's report.

The copy of accounts and the reports, as referred above, shall be forwarded to every contributory by post.

Liquidator has to submit to the Registrar the list of contributories as well along with the return of convening of AGM, copy of the notice, accounts and reports as aforesaid and minutes of the meeting within 15 days of the date of the meeting.

Final meeting and dissolution

Section 359

Notice of the final meeting can be dispatched to each contributory of the company through courier or electronic mode at least 21 days before the meeting. The timeframe is now increased from 10 days to 21 days.

PROVISIONS APPLICABLE TO CREDITORS' VOLUNTARY WINDING UP

Meeting of creditors

Section 362

In case of creditors' voluntary winding up the timeframe for holding the meeting of the creditors has been extended from one day to 14 days after the meeting at which the resolution for voluntary winding up is to be proposed.

The notice for such meeting to be sent to the creditors by post not less than 7 days before the meeting.

Duty of liquidator to call meeting of company and of creditors

Section 368

The liquidator shall summon and hold the AGM and meeting of creditors within two months from the close of first year after the commencement of winding up.

The documents to lay before the AGM now also include the statement of financial position along with the receipt and payment account, auditors' report and the liquidator's report.

The copy of accounts and the reports, as referred above, shall be forwarded to every contributory by post.

Liquidator has to submit to the Registrar the list of contributories as well along with the return of convening of the meeting, copy of the notice, accounts and reports as aforesaid and minutes of the meeting within 15 days of the date of the meeting.

Final meeting and dissolution

Section 369

Notice of the final meeting can be dispatched to each contributory of the company through courier or electronic mode at least 21 days before the meeting. The timeframe is now increased from 10 days to 21 days.

PROVISIONS APPLICABLE TO EVERY VOLUNTARY WINDING UP

Powers and duties of liquidator in voluntary winding up

Section 372 (4)

A new provision inserted whereby in case of winding up of the association licensed under section 42, the assets remaining after paying off debts and liabilities shall be transferred to another association, licensed under section 42 having similar or identical objectives instead of distribution of remaining assets to the members as the assets are mainly funded by the donations.

It is further provided that if any of the assets is not transferred in the manner provided due to any reason, the proceeds from sale of such assets shall be credited to Investor Education and Awareness Fund formed under section 245.

Arrangement when binding on company and creditors

Section 375

Any arrangement other than the arrangement referred to in section 356 entered into between a company which is about to be, or is in the course of being wound up and its creditors shall be binding on the company and on the creditors, if it is sanctioned by a special resolution of the company and acceded to by the creditors who hold three-fourths in value of the total amount due to all the creditors of the company.

Previously for the purpose of binding of arrangement on creditors; three-fourth of creditors in number and value were required to be agreed. Since there were practical problems to implement both the requirements of value as well as number; requirement of number has been removed.

INACTIVE COMPANY

Section 424

New provision has been added whereby a company, other than a listed company, which is formed for a future project or to hold an asset or intellectual property and has no significant accounting transaction, can obtain the status of "Inactive Company" by making an application to the Registrar in a prescribed manner.

Significant transactions exclude following transactions:

- (i) Payments made to fulfill legal requirements;
- (ii) Allotment of shares to fulfill requirements of this Ordinance; and
- (iii) Payments for maintenance of its office and records.

The registrar after considering the application is required to issue a certificate to the applicant and to maintain register of inactive companies.

If a company fails to file annual returns or financial statements for two consecutive years; the registrar, after issuing notice to that company, can enter its name in Inactive Companies register.

An inactive company shall have such minimum number of directors and file such documents as may be prescribed by the Commission to retain its inactive status.

Inactive company may switch to active status after submission of required documents and payment of fee.

If a company fails to comply with the requirements of this section, the registrar shall strike off its name from register of inactive companies.

Misleading or false information to obtain status of inactive company can make directors or other officers in default liable to imprisonment upto 3 years.

REMOVAL OF DEFUNCT COMPANIES FROM REGISTER

Section 425

Where the registrar has not received a response to inquiries raised from defunct companies through post, he shall, instead of publishing in the Official Gazette, publish a notice in newspaper with a view to striking the name of the company off the register.

Easy exit of a defunct company

Section 426

A company which ceases to operate and has no known assets and liabilities has been provided with easy exit option by applying to the registrar in a specified manner seeking to strike off its name from the register of companies on payment of prescribed fee.

The registrar may publish a notice in the Official Gazette stating that the company will be dissolved on expiration of 3 months from the date of notice unless cause is shown to the contrary. If no such objection is received within 3 months, the name of the company will be stroke off the register of companies; a notice will

be published in the Official Gazette and the company will stand dissolved.

It is further provided that the liability criminal, civil or otherwise, if any, of the directors, officers and members of the dissolved company shall continue and be enforceable as if the company had not been dissolved.

PART XII – COMPANIES ESTABLISHED OUTSIDE PAKISTAN

Power to seek information

Section 439

A new provision has been inserted empowering the Commission to seek information from the foreign company and any of its present or past directors, officers or auditors or a person who is directly or indirectly the beneficial owner of its equity securities, about the shareholding in the company. The said persons who ceased to hold office more than five years before the notice shall however not be compelled to furnish information.

It is pertinent that ‘foreign company’ means any company or body corporate incorporated outside Pakistan, which:

- a) has a place of business or liaison office in Pakistan whether by itself or through an agent, physically or through electronic mode; or
- b) conducts any business activity in Pakistan in any other manner as may be specified.

Penalties

Section 444

In this Ordinance the phrase “knowingly or willfully” has been expunged thus any default, for whatever reason, will now attract penalty of level 1 on the standard scale.

In addition, the foreign company or any of its directors or officers failing to comply with the provision of section

439 have been exposed to penalties of level 2 on the standard scale.

Restriction on canvassing for sale of securities by foreign company

Sections 447

The operative provisions of this section remain the same as was in the repealed Companies Ordinance 1984, except that the provision relating to penalties have been made stringent and attracts penalty of level 3 on the standard scale i.e. Rs. 100 million plus Rs. 500,000 per day for continued default.

PART XIII – GENERAL

Certification of Shariah compliant companies and securities

Section 451

This is a new provision introduced.

No company shall be called a Shariah compliant company unless it is conducting its business according to the principles of Shariah and it has obtained a certificate of Shariah compliance from the Commission.

No security shall be called a Shariah compliant security unless the proceeds from the security are utilized for Shariah permissible business and it has obtained a certificate of Shariah compliance from the Commission.

Criteria for grant of above certificates is yet to be prescribed.

Companies’ Global Register of Beneficial Ownership

Section 452

This is a newly inserted provision.

Every “substantial shareholder or officer” of a company incorporated under this Ordinance, having ten percent or more shares in a foreign company or “body

corporate” shall report to the company, regarding his beneficial ownership or any other percentage or interest as may be notified by the Commission, on a specified form within thirty days of holding such position or interest.

The afore-noted details are required to be reported to the registrar along with the annual return, however, currently it is required to be submitted through a special return on a specified form within sixty (60) days from the commencement of this Ordinance. Commission has started issuing notices to the companies for providing this information in the form attached thereto.

“beneficial ownership of shareholders or officer of a company” means ownership of securities beneficially owned, held or controlled by any officer or substantial shareholder directly or indirectly, either by-

- (a) him or her;
- (b) the wife or husband of an officer of a company, not being herself or himself an officer of the company;
- (c) the minor son or daughter of an officer where “son” includes step- son and “daughter” includes step-daughter; and “minor” means a person under the age of eighteen years;
- (d) in case of a company, where such officer or substantial shareholder is a shareholder, but to the extent of his proportionate shareholding in the company:

Provided that “control” in relation to securities means the power to exercise a controlling influence over the voting power attached thereto.

Provided further that in case the substantial shareholder is a non- natural person, only those securities will be treated beneficially owned by it, which are held in its name.

Non-compliance would attract a fine of level 1 on the standard scale.

Prevention of offences relating to fraud, money laundering and terrorist financing

Section 453

This is a newly inserted provision.

Every officer of a company shall endeavor to prevent the commission of any fraud, offences of money laundering including predicated offences as provided in the Anti-Money Laundering Act, 2010 (VII of 2010) with respect to affairs of the company and shall take adequate measures for the purpose.

Non-compliance of this provision would attract very stringent punishment of imprisonment for a term which may extend to three years and with fine which may extend to one hundred million rupees.

Free Zone Company

Section 454

This is a newly inserted provision.

A company incorporated for the purpose of carrying on business in the export processing zone or other area notified as free zone shall be eligible to such exemptions from the requirements of this Ordinance as may be notified in terms of section 459.

Information filed with the Registrar falls in the public domain, however, in order to provide protection to the foreign investors, this section provides that Commission will restrict the disclosure of information regarding promoters, shareholders and directors who are foreign nationals unless disclosure is authorized by the company.

Such company will be dispensed with the words ‘Private Limited’ or ‘Limited’ and called as ‘Free Zone Company’ having parenthesis as “FZC”.

Minister-in-Charge of the Federal Government has been empowered to exempt such Companies from any

provisions which relate to the legislative competence of the Parliament.

Filing of documents through intermediaries

Section 455

This is a newly inserted provision.

For the purposes of filing under the Ordinance, a person may avail services of “intermediary” as defined in the Electronic Transactions Ordinance, 2002.

“intermediary” means a person acting as a service provider in relation to the sending, receiving, storing or processing of the electronic communication or the provision of other services in relation to it.

Intermediary for this purpose will have to seek registration with the Commission. However, details of requirement for the process of registration are yet to be shared by the Commission.

Acceptance of advances by real estate companies

Section 456

It has been restricted that the company cannot engage in the business of real estate unless its principal line of business is development of real estate projects.

A company undertaking a real estate project is now required to seek approval of the Commission in prescribed manner with such additional disclosures requirements as notified (besides all necessary approvals, permissions, NOCs etc. of the concerned authorities). A real estate company shall not:

- a) announce any real estate project;
- b) make any publication or advertisement of real estate projects; and
- c) accept any advances or deposits in any form whatsoever against any booking to sell, or offer for

sale, or invite persons to purchase any land, apartment or building, as the case may be, in any real estate project or part of it;

Unless it has obtained approval of the Commission and all other necessary approvals.

The expression “real estate project” shall include projects for the development and construction of residential or commercial buildings or compounds and shall not include other construction project.

Non-compliance of these provisions would be an offence attracting a penalty of level 3 on the standard scale i.e. Rs. 100 million plus Rs. 500,000 per day during which default continues.

Minister-in-Charge of the Federal Government has been empowered to exempt such Companies from any provisions which relate to the legislative competence of the Parliament.

Agriculture Promotion Companies

Section 457

This is a newly inserted provision.

A person may establish Agriculture Promotion Company, having its principle line of business related to produce for agriculture promotion or managing produce as collateral or engaged in any activity connected with or related to any Produce or other related activities. Such company shall primarily deal with the produce of its members.

If Agriculture Promotion Company or its members indulge in activities prejudicial to the interest of stakeholders, shall be liable to stringent penalty of level 3 on the standard scale i.e. Rs. 100 million plus Rs. 500,000 per day during which default continues.

Minister-in-Charge of the Federal Government has been empowered to exempt such Companies from any provisions which relate to the legislative competence of the Parliament.

Payment against supply of agricultural produce

Section 458

This is a newly inserted provision.

This section primarily provides safeguard to farmers relating to payment against supply of agricultural produce by compelling every company acquiring agricultural produce to make payment promptly but not later than ninety days. In case of delay payment will include mark-up at the prevailing bank rate.

Contravention will attract penalty of level 3 on the standard scale i.e. Rs. 100 million plus Rs. 500,000 per day during which default continues.

Valuation by registered valuers

Section 460

This is a newly inserted provision to introduce a regime for professional valuers, their registration and to regulate their activities.

Where valuation is required, in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities, it shall be valued by a person having such qualifications and experience and registered with the Commission as a valuer in the prescribed manner based on the criteria so laid down.

Valuer will be required to prepare report in such manner and by applying such approaches as may be prescribed.

Contravention will expose valuer to penalty of level 2 on the standard scale. However, if valuer contravened with fraudulent intention, he shall be punishable with imprisonment that may extend to one year and with fine to the extent of five hundred thousand rupees. He shall also be liable to refund the remuneration received from the company; and pay for the damages to the company and to any other person for loss arising out of incorrect or misleading statements made in his report.

Security clearance of shareholder and director

Section 461

This is a newly inserted provision.

This has been a current practice where security clearance in respect of any shareholder, director and chief executive was being conducted by the Ministry of Interior and other agencies but law was silent. Now with the introduction of this provision, the Commission has been empowered to obtain security clearance of any shareholder or director or other office bearer of a company including foreign company from any local or foreign agency.

Registration Offices and Fees

Section 462

In respect of registration of office certain amendments have been made and consequential provisions have been inserted.

As registrar is appointed by the Commission, the power of the Federal Government for setting up of registration offices, appointment of officers and making regulations with respect to their duties are now vested with the Commission.

New sub-section has been inserted to hold the Commission or registrar harmless of being liable for any loss or damage suffered by any person by reason of any error or omission in any document obtained, if such error or omission was made in good faith and in the ordinary course of discharge of duties of the Commission or registrar or occurred due to any defect or breakdown in the service or in the equipment used.

Registrar not to accept defective documents

Section 464

The Registrar had the discretion to require the company either to file a revised document or straight away reject the document. Now the Registrar shall give

an opportunity to submit a revised document. In case of failure to submit the revised document within given period, he may reject the document.

Registrar, in the cases where document was accepted for record but found to be defective, incorrect, false or forged, has also been empowered to allow rectification, if possible; otherwise to cancel it.

Special return to rectify the data

Section 465

The Commission or Registrar may at any time, by a general or specific order, require a company to file a special return signed by all directors to rectify the records.

The information provided in the special return filed shall be a conclusive evidence of all the relevant facts and shall not be called in question by any of the person who has signed it.

The information provided in special return shall be a conclusive evidence of all facts. The persons who have signed the special return shall be responsible for the loss caused to any person on account of incorrect information provided in the return filed.

Jurisdiction in the disputes relating to shareholding and directorship

Section 466

This is a newly inserted provision.

In the cases of dispute on directorship or shareholding the cases were being put forward before the registrar for resolution. This section is introduced to absolve registrar from such kind of disputes by providing that registrar shall have no jurisdiction to determine the rights of the parties relating to shareholding and directorship.

Approval of transfer of shares by the agents licenced by the Commission

Section 467

This is a newly inserted provision.

The concept of third party to approve the transfer of shares in the case of notified companies is introduced whereby agent will be licenced by the Commission for this purpose.

Under this arrangement, before making any application for registration of the transfer of shares to the Board of directors the transferor and the transferee shall appear before the agent who shall record the statement of both the parties and forward a certified copy to the company in prescribed form and manner.

The agent has been required to maintain record for period of ten years and has been made responsible for any loss caused to any person due to his fault.

This provision is probably introduced to avoid disputes between transferor and transferee.

Acceptance of documents presented after prescribed time

Section 468

A new fee structure has been introduced for late filing of documents after expiry of prescribed period. The registrar may accept the filings in accordance with following table:

(a)	within three months,	a fee equivalent to two times of prescribed fee;
(b)	within six months	a fee equivalent to three times;
(c)	within one year	a fee equivalent to four times;
(d)	within two years	a fee equivalent to five times;

There was always exposure that proceedings may be initiated against the company or any of its officer due to

the late filing. A new proviso has now been added to provide relief that no adjudication process shall be initiated just because of late filing.

Filing of documents electronically

Section 471

This is a new provision.

This is an enabling provision empowering the Commission to direct companies to file any document, return or application electronically.

This also empowers Commission or the registrar to require mandatory electronic filing after the notified date, any document, return or application to be filed, lodged or submitted with the Commission or the registrar. This however also provides power to relax the requirement for certain class of companies.

Destruction of physical record

Section 472

This is a new provision inserted to enable destruction of physical record maintained for specified period of time by the registrar or the Commission.

The physical record converted into electronic form has been provided legal cover so as to be treated admissible as an evidence in all legal proceedings.

Supply of documents, information, notices to the members electronically

Section 473

Enabling provision introduced for mandatory provision of information / documents.

After the notified date all information, notices and accounts or any other document to be provided by the company to its members, shall only be provided electronically on the email address provided by the members. A member requiring supply of any document in physical form shall bear the cost as fixed by the company.

Offences to be cognizable

Section 476

An amendment has been made to the previous provision where all the offences under the Repealed Companies Ordinance 1984 were non-cognizable. Under the Companies Ordinance 2016, any offence (other than expressly provided under this Ordinance or in the Eighth Schedule) in which punishment of imprisonment is provided shall be cognizable by the Commission only and be proceeded in accordance with the "Securities and Exchange Commission of Pakistan Act, 1997" and this Ordinance

Complaint to the court by the Commission, registrar, member or creditor in case of certain offences

Section 477

This is a new provision which provides for courts not to take any cognizance of offences, committed by any company or any officer or auditor or any other person, provided in the Eighth Schedule unless written complaint by the Commission, member, and creditor as specified for this purpose. The list of offences as per Eighth Schedule is listed below for reference:

- *Sub-section (5) of section 73*: Intent to defraud in issuance of duplicate share certificate;
- *Section 95*: Penalty on concealment of name of creditor in reduction of share capital;
- *Section 177*: Ineligibility of bankrupt to act as director;
- *Sub-section (2) of section 243*: Non-payment of declared dividend;
- *Sub-section (4) of section 351*: Declaration of solvency of or winding up without reasonable grounds;
- *Section 404*: Penalty on giving false evidence;

- *Sub-section (5) of section 418:* Penalty on contraventions by liquidator;
- *Proviso to sub-section (4) of section 460:* Penalty on contravention by valuer;
- *Sub-section (2) of section 477:* Penalty on action taken by liquidator on winding up;
- *Sub-section (2) of section 499:* Penal action on non-compliance of directive / order of court, Commission, registrar, Minister-in-Charge.

Penalty to be imposed by the Commission

Section 478

Separate provision has been added for providing opportunity of being heard for levying penalty for any offence. It is provided that such penalty shall be imposed by the Commission after providing a reasonable opportunity of hearing to the Party.

Adjudication of offences and standard scale of penalty

Section 479.

Amendments have been made by introducing a standard scale of penalty for offences replacing the amount of fine at the end of each provision. The standard scale consists of-

Level	Limit of penalty	Per day penalty during which the default continues
1	Upto Rs.25,000	Upto Rs.500
2	Upto Rs.500,000	Upto Rs.1,000
3	Upto Rs.100 million	Upto Rs.500,000

It is provided that penalty under level 1, 2 and 3 shall be adjudged and imposed by the authority having

jurisdiction i.e. level 1 by the officer incharge of CRO (provided the Commission and the registrar shall have concurrent jurisdiction); for level 2 by the registrar (provided the Commissioner shall have concurrent jurisdiction); and level 3 by the Commission or officer authorized by it.

Appeal against order passed by officer of the Commission

Section 480

This provision relating to filing of appeal has been introduced instead of filing of revision application under the Repealed Companies Ordinance 1984. It allows person aggrieved by any order passed under this Ordinance to prefer an appeal within thirty days of such order, to:

- the registrar designated by the Commission against the order passed by an additional registrar, a joint registrar, a deputy registrar or an assistant registrar; and
- officer authorized by the Commission where the order has been passed or upheld by the registrar designated under clause (a) by the Commission.

Appeals before the Appellate Bench

Section 481

Any person aggrieved by an order passed by the registrar or an officer authorized by the Commission under section 480 may prefer an appeal to the Appellate Bench of the Commission under "section 33 of the Securities and Exchange Commission of Pakistan Act, 1997".

No appeal shall lie against:

- an administrative direction given by a Commissioner or an officer of the Commission;
- a sanction provided or decision made by a Commissioner or an officer of the Commission to commence legal proceedings; and

- an interim order which does not dispose of the entire matter.

Adjudication of offences involving imprisonment

Section 482

Regardless of anything contained in the Code of Criminal Procedure 1898, no court other than court of sessions or such other court as may be notified under “section 37 of the Securities and Exchange Commission of Pakistan Act, 1997”, shall take cognizance of any offence punishable with imprisonment or imprisonment in addition to fine under this Ordinance.

Powers of the Commission in relation to enquiries and proceedings

Section 483

An amendment has been made whereunder powers, in relation to enquiries and proceedings, conferred on the Federal Government are now vested with the Commission.

Recovery of penalty

Section 485

Any sum adjudged, penalty imposed by the Commission or the registrar in exercise of powers under this Ordinance or any rules or any regulations made thereunder or directed to be paid, shall be recovered in accordance with “section 42B of the Securities and Exchange Commission of Pakistan Act, 1997”.

Prosecution of offences by the Commission

Section 486

This is a newly inserted provision whereby all prosecution, under this Ordinance, conducted by the Commission shall be in accordance with section “38 of

Securities and Exchange Commission of Pakistan Act, 1997”.

Appeal against acquittal

Section 487

Regardless of anything contained in the Code of Criminal Procedure, 1898, the Commission may direct any officer of the Commission or authorise any other person to present an appeal from an order of acquittal passed by the court other than a Court (i.e. Company Bench of a High Court) and an appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate court.

Payment of compensation in cases of frivolous or vexatious prosecution

Section 488

New sub-section has been inserted to hold the authorised officer of the Commission or registrar harmless, from any claim of compensation or suit for damages, for his actions if done in good faith.

Penalty for false statement, falsification, forgery, fraud, deception

Section 496

This section has been amended to provide for offences and their penalties for committing false statement, forgery or fraud.

It provides that irrespective anything contained in any other law, whoever in relations to affairs of the company or body corporate:

- 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;
- makes any false entry or omits or alter any material particular from books, paper or accounts;

- submit, present or produce any forged or fabricated document; and
- 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 may extend to seven years and shall also be liable to fine not to be less than the amount involved in the fraud but may extend to three times the amount involved in the offence. However, if offence involves public interest, the term of imprisonment shall not be less than three years alongwith fine.

Repeal and savings

Section 509

The Companies Ordinance, 1984, hereinafter called as repealed Ordinance, shall stand repealed, except Part VIIIA consisting of sections 282A to 282N, from the date of coming into force of this Ordinance and the provisions of the said Part VIIIA along with all related or connected provisions of the repealed Ordinance shall be applicable mutatis mutandis to Non-banking Finance Companies in a manner as if the repealed Ordinance has not been repealed.

Provided that repeal of the repealed Ordinance shall not:

- affect the incorporation of any company registered or saved under repealed Ordinance; or
- revive anything not in force at the time at which the repeal take effect; or
- affect the previous operation of the repealed Ordinance or anything duly done or suffered thereunder; or
- affect any right, privilege, obligation or liability acquired, accrued or incurred under the said repealed Ordinance; or
- affect any penalty imposed, forfeiture made or punishment awarded in respect of any offence committed under the repealed Ordinance; or
- affect any inspection, investigation, prosecution, legal proceeding or remedy in respect of any obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such inspection, investigation, prosecution, legal proceedings or remedy may be made, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Ordinance has not been passed.

Notwithstanding the repeal of the repealed Ordinance:

- any document referring to any provision of the repealed Ordinance shall be construed as referring, as far as may be, to this Ordinance, or to the corresponding provision of this Ordinance;
- all rules, regulations, notification, guideline, circular, directive, order (special or general) or exemption issued, made or granted under the repealed Ordinance shall have effect as if it had been issued, made or granted under the corresponding provision of this Ordinance unless repealed, amended or substituted under this Ordinance;
- any official appointed and anybody elected or constituted under repealed Ordinance shall continue and shall be deemed to have been appointed, elected or constituted, as the case may be, under the corresponding provision of this Ordinance;
- all funds and accounts constituted or maintained under the repealed Ordinance shall be deemed to be in continuation of the corresponding funds and accounts constituted or maintained under this Ordinance;
- every mortgage and charge recorded in any register or book maintained at any office under the repealed Ordinance shall be deemed to have been recorded in the register or book maintained under the corresponding provisions of this Ordinance;

- any licence, certificate or document issued, made or granted under the repealed Ordinance shall be deemed to have been issued, made or granted under this Ordinance and shall, unless cancelled, in pursuance of any provisions of this Ordinance, continue to be in force until the date specified in the licence, certificate or documents.

The mention of particular matters in this section or in any other section of this Ordinance shall not prejudice the general application of section 6 of the General Clauses Act, 1897 (X of 1897), with regard to the effect of repeals.

After the commencement of this Ordinance, the expression Companies Ordinance, 1984 (XLVII of 1984) and any referring sections thereof, used in any law for the time being in force including all administered legislation and rules, regulations and guidelines made thereunder, shall be read as Companies Ordinance, 2016 along with corresponding provisions of Companies Ordinance, 2016 unless the context requires otherwise.

Power to issue directives, circulars, guidelines

Section 510

This is a new provision to empower the Commission to issue such directives, prudential requirements, codes, guidelines, circulars or notifications as are necessary.

Obstruction or contravention by any person will expose him to a penalty of level 3 on the standard scale.

Power of the Commission to permit use of Urdu words of abbreviations

Section 511

This is a new provision to empower the Commission to permit use of an Urdu equivalent of any English word or term or an abbreviation of any such word or term instead of such word or term.

Validation of laws

Section 514

This section has been introduced to validate all the amendments made to the Companies Ordinance, 1984 (XLVII of 1984) or any administered legislation through various Finance Acts. All such amendments shall be deemed to have been validly made from the date of commencement of such Acts.

Notwithstanding anything contained in any other law, all orders made, proceedings taken and acts done, rules, regulations, instructions, notifications and other legal instruments made at any time before the promulgation of Companies Ordinance, 1984 (XLVII of 1984) or any administered legislation, including appeals decided by the Appellate Bench of the Commission or authorization of investigation, enquiry and inspection by the Federal Government, the Commission or any officer of the Commission under delegated authority, the Registrar of Companies or any other officer having authority under the law in exercise or purported exercise of powers under amendments made to Companies Ordinance, 1984 (XLVII of 1984) or any administered legislation through various Finance Acts, and that have now been promulgated as well as affirmed in terms of this section, are declared and affirmed to have been and shall be deemed to have always been, validly made, decided, taken or done.



Third Schedule

The third schedule is a new schedule which lays down classification of Companies in these main categories and the applicable accounting framework to be followed by each. Previously (in the fifth schedule of Repealed Ordinance) the medium sized companies and small sized companies were encouraged to follow International Financial Reporting Standards.

The framework for listed companies, and non-listed public interest companies has been specified as International Financial Reporting Standards. We consider that this relates to IFRSs as notified by the Commission in terms of section 225 of the Ordinance.

This Schedule as prescribed is appended below for reference:

(Section 224 of the Ordinance)

Classification of Companies

S. No.	Classification Criteria of Company	Applicable Accounting Framework	Relevant Schedule of Companies Bill ¹
1.	Public Interest Company & Large Sized Company (PILSC)		
	Sub-categories of PILSC:		
	a) Listed Company	International Financial Reporting Standards	Fourth Schedule
	b) Non-listed Company which is: (i) a public sector company as defined in the Ordinance; or (ii) a public utility or similar company carrying on the business of essential public service; or (iii) holding assets in a fiduciary capacity for a broad group of outsiders, such as a bank, insurance company, securities broker/dealer, pension fund, mutual fund or investment banking entity.	International Financial Reporting Standards	Fifth Schedule
	c) Non-listed Company with: (i) paid-up capital of Rs. 200 million or more; or (ii) turnover of Rs. 1 billion or more; or (iii) employees more than 750; or (iv) such number of members holding ordinary shares as may be notified; or (v) assets exceeding such value as may be notified.		
	d) Foreign Company with turnover of Rs.1 billion or more.		
	e) Non-listed Company licenced / formed under Section 42 / Section 45 of the Ordinance having annual gross revenue (grants/income/subsidies/donations) including other income/revenue of Rs.200 million and above.	International Financial Reporting Standards and Accounting Standards for NPOs	Fifth Schedule
2.	Medium Sized Company (MSC)		
	Sub-categories of MSC:		
	a) Non-listed Public Company with: (i) paid-up capital less than Rs.200 million; (ii) turnover less than Rs1 billion; (iii) Employees more than 250 but less than 750.	International Financial Reporting Standard for SMEs	Fifth Schedule
	b) Private Company with: (i) paid-up capital of greater than Rs. 10 million but not exceeding Rs. 200 million; (ii) turnover greater than Rs. 100 million but not exceeding Rs. 1 billion; (iii) Employees more than 250 but less than 750.		
	c) A Foreign Company which has turnover less than Rs. 1 billion		
	d) Non-listed Company licenced / formed under Section 42 / Section 45 of the Ordinance which has annual gross revenue (grants/income/subsidies/donations) including other income or revenue less than Rs.200 million.	Accounting Standard for NPOs	Fifth Schedule
3.	Small Sized Company (SSC)		
	A private company having: (i) paid-up capital up to Rs. 10 million; (ii) turnover not exceeding Rs.100 million; (iii) Employees not more than 250.	Revised AFRS for SSEs	Fifth Schedule

Note:

The classification of a company shall be based on the previous year's audited financial statements.

The classification of a company can be changed where it does not fall under the previous criteria for two consecutive years.

The number of employees means the average number of persons employed by a company in that financial year calculated on monthly basis.



Comparison of Fourth & Fifth Schedule

Old/ new	Fourth Schedule	Fifth Schedule
New	The disclosure requirements, as provided in this schedule, are in addition to the disclosure requirements prescribed in applicable Financial Reporting Framework notified by the Commission and shall be made in the notes to the accounts unless specifically required otherwise	The disclosure requirements, as provided in this schedule, are in addition to the disclosure requirements prescribed in applicable Financial Reporting Framework notified by the Commission and shall be made in the notes to the accounts unless specifically required otherwise;
New	In addition to the information expressly required to be disclosed under the Ordinance and this schedule, there shall be added such other information as may be necessary to ensure that required disclosure is not misleading.	In addition to the information expressly required to be disclosed under the Ordinance and this schedule, there shall be added such other information as may be necessary to ensure that required disclosure is not misleading.
Old with reference to Fourth Schedule added in Fifth Schedule	Any word or expression used herein but not defined in the Ordinance and/or Fourth Schedule shall have the same meaning as under the applicable Accounting Framework.	Any word or expression used herein but not defined in the Ordinance and/or Fourth Schedule shall have the same meaning as under the applicable Accounting Framework.
(ii) and (iii) are new requirements	capital reserve" includes:	Although the definition has not been provided specifically in Fifth Schedule however this is equally applicable for unlisted companies.
	(i) share premium account;	
	(ii) reserve created under any other law for the time being in force;	
	(iii) reserve arising as a consequences of scheme of arrangement;	
	(iv) profit prior to incorporation; and	
	(v) any other reserve not regarded free for distribution by way of dividend	
Old with threshold for basic salary increased to twelve hundred thousand rupees.	"executive" means an employee, other than the chief executive and directors, whose basic salary exceeds twelve hundred thousand rupees in a financial year;	Although the definition has not been provided specifically in Fifth Schedule however this is equally applicable for unlisted companies.

Old/ new	Fourth Schedule	Fifth Schedule
New	<p>General information about the company comprising the following:</p> <ul style="list-style-type: none"> (i) Geographical location and address of all business units including Mills/plant; (ii) Particulars of company's immovable fixed assets, including , location and area of land; (iii) The capacity of an industrial unit, actual production and the reasons for shortfall; (iv) Number of persons employed as on the date 'of financial statements and average number of employees during the year, separately disclosing factory employees; (v) Name of associated companies or related parties or undertakings along with the basis of relationship describing common directorship and percentage of shareholding. 	<p>General information about the company comprising the following:</p> <ul style="list-style-type: none"> (i) geographical location of all business units including mills/plant; (ii) the capacity of an industrial unit, actual production and the reasons for shortfall; (iii) number of persons employed as on the date of financial statements and average number of employees during the year separately disclosing factory employees; and (iv) name of associated companies or related parties or undertakings along with the basis of relationship describing common directorship and/or percentage of shareholding.
New	<p>In respect of associated companies, subsidiaries, joint ventures or holding companies incorporated outside Pakistan, following shall be separately disclosed;</p> <ul style="list-style-type: none"> (i) Name of undertaking, registered address and country of incorporation; (ii) Basis of association; (iii) Aggregate Percentage of shareholding, including shareholding through other companies or entities; 	<p>In respect of associated companies, subsidiaries, joint ventures or holding companies incorporated outside Pakistan, name of undertaking, registered address and country of incorporation shall be disclosed;</p>

Old/ new	Fourth Schedule	Fifth Schedule
	<p>(iv) Name of Chief Executive Officer or Principal Officer or Authorized Agent;</p> <p>(v) Operational status; and</p> <p>(vi) Auditor's opinion on latest available financial statements.</p>	
New	Summary of significant transactions and events that have affected the company's financial position and performance during the year;	Summary of significant transactions and events that have affected the company's financial position and performance during the year;
New	<p>Particulars of major foreign shareholders, other than natural person, holding more than 5% of paid up capital in the company:</p> <p>(i) Names and address of beneficial owners and legal status along with the name of Chief Executive or Principal Officer or Authorized Agent;</p> <p>(ii) Name and particulars of Pakistani resident associated with such shareholder or entity, if any; and</p> <p>(iii) Detail of conditions and compliance status thereof, imposed by regulatory authorities in Pakistan/foreign jurisdiction for foreign investments, if any.</p>	<p>Particulars of major foreign shareholders, other than natural person, holding more than 5% of paid up capital the company:</p> <p>(i) names and address of beneficial owners and legal status along with the name of Chief Executive or Principal Officer or Authorized Agent;</p> <p>(ii) name and particulars of Pakistani resident associated with such shareholder or entity, if any; and</p> <p>(iii) detail of conditions and compliance status thereof, imposed by regulatory authorities in Pakistan/foreign jurisdiction for foreign investments, if any.</p>
Old	General nature of any credit facilities available to the company under any contract, other than trade credit available in the ordinary course of business, and not availed of at the date of the statement of financial position;	
Old	Any penalty in terms of money or otherwise imposed under any law by any authority, on the Company shall be disclosed in the first annual report furnished after the imposition of the	

Old/ new	Fourth Schedule	Fifth Schedule
	<p>penalty. If, as a result of any appeal, revision petition, or review application, such penalty is reduced enhanced or waived, the original</p> <p>penalty imposed shall nevertheless be disclosed, and the fact of any reduction, enhancement or waiver shall be disclosed, in the first annual report furnished after such reduction, enhancement or waiver;</p>	
New	In financial statements issued after initial or secondary public offering(s) of securities or issuance of debt instrument(s) implementation of plans as disclosed in the prospectus/offering document with regards to utilization of proceeds raised shall be disclosed till full implementation of such plans;	
New	<p>In cases where company has given loans or advances or has made investments (both short term and long term) in foreign companies or undertakings following disclosures are required to be made:</p> <ul style="list-style-type: none"> (i) Name of the company or undertaking along with jurisdiction where it is located; (ii) Name and address of beneficial owner of investee company, if any; (iii) Amount of loan/investment (both in local and foreign currency); (iv) Terms and conditions and period for which loans or advances or investments has been made; (v) Amount of return received; (vi) Details of all litigations against the Investee company in the foreign jurisdictions; 	In cases, where company has given loans or advances or has made investments (both short term and long term) in foreign companies or undertakings, name of the company or undertaking along with jurisdiction where it is located shall be disclosed.

Old/ new	Fourth Schedule	Fifth Schedule
	<p>(vii) Any default/breach relating to foreign loan or investment; and</p> <p>(viii) Gain or loss in case of disposals of foreign investments.</p>	
New	<p>In cases where company has made export sales following disclosures are required to be made in respect ,of outstanding trade debts:</p> <p>(i) Amount of export sales made in each foreign jurisdiction along - with break up into confirmed LC, contract or other categories;</p> <p>(ii) Name of company or undertaking in case of related party;</p> <p>(iii) Name of defaulting parties, relationship if any, and the default amount; and</p> <p>(iv) Brief description of any legal action taken against the defaulting parties.</p>	
New	<p>Sharia complaint companies and the companies listed on Islamic index shall disclose:</p> <p>(i) Loans/advances obtained as per Islamic mode;</p> <p>(ii) Shariah compliant bank deposits/bank balances;</p> <p>(iii) Profit earned from shariah compliant bank deposits/bank balances;</p> <p>(iv) Revenue earned from a shariah compliant business segment;</p> <p>(v) Gain/loss or dividend earned from shariah compliant investments;</p>	

Old/ new	Fourth Schedule	Fifth Schedule
	PART II REQUIREMENTS AS TO STATEMENT OF FINANCIAL POSITION	
New	<p>Following items shall be disclosed as separate line items on the face of the financial statements;</p> <p>(i) Revaluation surplus on property, plant and equipment;</p> <p>(ii) Long term deposits and prepayments;</p> <p>(iii) Unpaid dividend;</p> <p>(iv) Unclaimed dividend; and</p> <p>(v) Cash and bank balances.</p>	<p>Following items shall be disclosed as separate line items on the face of the financial statements;</p> <p>(i) revaluation surplus on property, plant & equipment;</p> <p>(ii) long Term deposits and prepayment;</p> <p>(iii) unpaid dividend;</p> <p>(iv) unclaimed dividend; and</p> <p>(v) cash and bank balances.</p>
	Fixed assets	
New	Where any property or asset acquired with the funds of the company and is not held in the name of the company or is not in the possession and control of the company, this fact along with reasons for the property or asset not being in the name of or possession or control of the company shall be stated; and the description and value of the property or asset, the person in whose name and possession or control it is held shall be disclosed;	Where any property or asset acquired with the funds of the company, is not held in the name of the company or is not in the possession and control of company, this fact along with reasons for the property or asset not being in the name of or possession or control of the company shall be stated; and the description and value of the property or asset, the person in whose name and possession or control it is held shall be disclosed;
Old	Land and building shall be distinguished between free-hold and leasehold;	Land and building shall be distinguished between free-hold and leasehold;
New	Forced sale value shall be disclosed separately in case of revaluation of Property, Plant and Equipment or investment property;	Forced sale value shall be disclosed separately in case of revaluation of Property, Plant and Equipment or investment property;
Old requirement with thresh hold increased to five hundred thousand rupees. However this is a new	In the case of sale of fixed assets, if the aggregate book value of assets exceeds five hundred thousand rupees, following particulars of each asset shall be disclosed:	In the case of sale of fixed assets, if the aggregate book value of assets exceeds, five hundred thousand rupees, following particulars of each asset shall be disclosed:

Old/ new	Fourth Schedule	Fifth Schedule
requirement for Fifth schedule companies	<ul style="list-style-type: none"> (i) cost or revalued amount, as the case may be; (ii) the book value; (iii) the sale price and the mode of disposal (e.g. by tender or negotiation); (iv) the particulars of the purchaser; (v) gain or loss; and (vi) relationship, if any of purchaser with Company or any of its directors. 	<ul style="list-style-type: none"> (i) cost or revalued amount, as the case may be; (ii) the book value; (iii) the sale price and the mode of disposal (e.g. by tender or negotiation); (iv) the particulars of the purchaser; (v) gain or loss; (vi) and relationship, if any of purchaser with company or any of its directors.
	Long term investments	
New	Investments in associated companies or undertakings have been made in accordance with the requirements under the Ordinance;	Investments in associated companies or undertakings have been made in accordance with the requirements under the Ordinance.
	Long term loans and advances	
New	<p>With regards to loans and advances to directors following shall be disclosed:</p> <ul style="list-style-type: none"> (i) that the loans and advances have been made in compliance with the requirements of the Ordinance; (ii) the purposes for which loans or advances were made; and (iii) reconciliation of the carrying amount at the beginning and end of the period, showing disbursements and repayments; 	<p>With regards to loans and advances to directors, following shall be disclosed:</p> <ul style="list-style-type: none"> (i) the purposes for which loans or advances were made; and (ii) reconciliation of the carrying amount at the beginning and end of the period, showing disbursements and repayments.
New	In case of any loans or advances obtained/provided, at terms other than arm's length basis, reasons thereof shall be disclosed;	In case of any loans or advances obtained/ provided, at terms other than arm's length basis, reasons thereof shall be disclosed;

Old/ new	Fourth Schedule	Fifth Schedule
Old with certain changes. However this is a new requirement for Fifth schedule companies	<p>In respect of loans and advances to associates and related parties there shall be disclose:</p> <ul style="list-style-type: none"> (i) the name of each associate and related party; (ii) the terms of loans and advances; (iii) the particulars of collateral security held, if any; (iv) the maximum aggregate amount outstanding at any time during the year calculated by reference to month-end balances; (v) provisions for doubtful loans and advances; and (vi) loans and advances written off, if any. 	<p>In respect of loans, advances to associates there shall be disclosed:</p> <ul style="list-style-type: none"> (i) the name of each associate and related parties; (ii) the terms of loans and advances; (iii) the particulars of collateral security held, if any; (iv) the maximum aggregate amount outstanding at any time during the year calculated by reference to month-end balances; (v) provisions for doubtful loans and advances; and (vi) loans or advances written off, if any.
	Current assets	
New with additional requirements for related parties in case of listed companies	<p>In respect of debts/receivables from associates and related parties there shall be disclose:</p> <ul style="list-style-type: none"> (i) the name of each associate and related party; (ii) the maximum aggregate amount outstanding at any time during the year calculated by reference to month-end balances; (iii) receivables, that are either past due or impaired, along with age analysis distinguishing between trade debts, loans, advances and other receivables; (iv) debts written off as irrecoverable, distinguishing between trade debts and other receivables; 	<p>In respect of debts/receivables from associates there shall be disclose:</p> <ul style="list-style-type: none"> (i) the name of each associate and related party; (ii) the maximum aggregate amount outstanding at any time during the year calculated by reference to month-end balances; (iii) receivables, that are either past due or impaired, along with age analysis distinguishing between trade debts, loans, advances and other receivables; (iv) debts written off as irrecoverable, distinguishing between trade debts and other receivables;

Old/ new	Fourth Schedule	Fifth Schedule
	<p>(v) provisions for doubtful or bad debts distinguishing between trade debts, loans, advances and other receivables; and</p> <p>(vi) justification for reversal of provisions of doubtful debts, if any</p>	<p>(v) provisions for doubtful or bad debts distinguishing between trade debts, loans, advances and other receivables; and</p> <p>(vi) justification for reversal of provisions of doubtful debts, if any</p>
New	In respect of loans and advances, other than those to the suppliers of goods or services, the name of the borrower and terms of repayment if the loan or advance exceeds rupees one million, together with the particulars of collateral security, if any, shall be disclosed separately;	
New	Provision, if any, made for bad or doubtful loans and advances or for diminution in the value of or loss in respect of any asset shall be shown as a deduction from the gross amounts;	Provision, if any, made for bad or doubtful loans and advances or for diminution in the value of or loss in respect of any asset shall be shown as a deduction from the gross amounts;
	Share capital and reserves	
Old with additional disclosure requirement for any reserve required to be maintained under the Ordinance.	Capital and Revenue reserves shall be clearly distinguished. Any reserve required to be maintained under the Ordinance shall be separately disclosed. Any legal or other restrictions, on the ability of the company to distribute or otherwise, shall be disclosed for all kind of reserves maintained by the company;	Capital and revenue reserves shall be clearly distinguished. Any reserve required to be maintained under the Ordinance shall be separately disclosed. Any legal or other restrictions on the ability of the company to distribute or otherwise apply its reserves shall also be disclosed for all kind of reserves maintained by the company.
Old- treasury shares disclosure added	<p>In respect of issued share capital of a company following shall be disclosed separately;</p> <p>(i) shares allotted for consideration paid in cash;</p> <p>(ii) shares allotted for consideration other than cash, showing separately shares issued against property and others (to be specified);</p>	<p>In respect of issued share capital of a company following shall be disclosed separately;</p> <p>(v) shares allotted for consideration paid in cash;</p> <p>(vi) shares allotted for consideration other than cash, showing separately shares issued against property and others (to be specified);</p>

Old/ new	Fourth Schedule	Fifth Schedule
	(iii) shares allotted as bonus shares; (iv) treasury shares.	(vii) shares allotted as bonus shares; (viii) treasury shares.
New	Shareholder agreements for voting rights, Board selection, rights of first refusal, and block voting shall be disclosed.	Shareholder agreements for voting rights, Board selection, rights of first refusal, and block voting shall be disclosed.
	Non-current liabilities	
Old	Amount due to associated companies and related parties shall be disclosed separately	Amount due to associated companies and related parties shall be disclosed separately
	Current liabilities	
Old with certain enhancements	<p>Following items shall be disclosed as separate line items;</p> <p>(i) Payable to provident fund;</p> <p>(ii) Deposits, accrued liabilities and advances;</p> <p>(iii) Loans from banking companies and other financial institutions, other than related parties;</p> <p>(iv) Loans and advances from related parties including sponsors and directors along with purpose and utilization of amounts; and</p> <p>(v) Loans and advances shall be classified as secured and unsecured.</p>	<p>Following items shall be disclosed as separate line items;</p> <p>(i) Payable to provident fund;</p> <p>(ii) Deposits, accrued liabilities and advances;</p> <p>(iii) Loans from banking companies and other financial institutions, other than associated company;</p> <p>(iv) Loans and advances from associated company, sponsors and directors along with purpose and utilization of amounts; and</p> <p>(v) Loans and advances shall be classified as secured and unsecured</p>
New	In the case of provident fund/provident fund trust, maintained by the company a statement that, investments in collective investment schemes, listed equity and listed debt securities out of provident fund/trust have been made in accordance with the provisions of	In the case of provident fund/provident fund trust, maintained by the company, a statement that, investments in collective investment schemes, listed equity and listed debt securities out of provident fund/trust have been made in accordance with the provisions of Section 218 of the

Old/ new	Fourth Schedule	Fifth Schedule
	Section 218 of the Ordinance and the Rules formulated for this purpose.	Ordinance and the Rules formulated for this purpose.
New	<p>In respect of security deposit payable, following shall be disclosed:</p> <p>(i) Bifurcation of amount received as security deposits for goods/services to be delivered/provided, into amounts utilizable for Company business and others;</p> <p>(ii) Amount utilized for the purpose of the business from the Security deposit in accordance with requirements of written agreements, in terms of Section 217 of the Ordinance; and</p> <p>(iii) Amount kept in separate bank account.</p>	<p>In respect of security deposit payable, following shall be disclosed:</p> <p>(iv) Bifurcation of amount received as security deposits for goods/services to be delivered/provided, into amounts utilizable for Company business and others;</p> <p>(v) Amount utilized for the purpose of the business from the Security deposit in accordance with requirements of written agreements, in terms of Section 217 of the Ordinance; and</p> <p>(vi) Amount kept in separate bank account.</p>
	Contingencies and commitments	
New	In describing legal proceedings, under any court, agency or government authority, whether local or foreign, include name of the court, agency or authority in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis of the proceeding and the relief sought;	In describing legal proceedings, under any court, agency or government authority, whether local or foreign, include name of the court, agency or authority in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis of the proceeding and the relief sought;
	PART-III REQUIREMENTS AS TO PROFIT AND LOSS ACCOUNT	
Old with additional disclosure requirement for other taxes directly attributed to sales.	<p>Following items shall be disclosed as deduction from turnover as separate line items;</p> <p>(i) trade discount; and</p> <p>(ii) sales and other taxes directly attributed to sales.</p>	<p>Following items shall be disclosed as deduction from turnover as separate line items;</p> <p>(i) trade discount; and</p> <p>(ii) sales and other taxes directly attributed to sales.</p>

Old/ new	Fourth Schedule	Fifth Schedule
New in case of unlisted companies	The aggregate amount of auditors' remuneration, showing separately fees, expenses and other remuneration for services rendered as auditors and for services rendered in any other capacity and stating the nature of such other services. In the case of joint auditors, the aforesaid information shall be shown separately for each of the joint auditors;	The aggregate amount of auditors' remuneration, showing separately fees, expenses and other remuneration for services rendered as auditors and for services rendered in any other capacity and stating the nature of such other services. In the case of joint auditors, the aforesaid information shall be shown separately for each of the joint auditors;
Additional requirement for single donations exceeding Rs. 50,000. New in case of unlisted companies.	In case, donation to a single party exceeds Rs. 500,000, name of donee(s) shall be disclosed and where any director or his spouse has interest in the donee(s), irrespective of the amount, names of such directors along with their interest shall be disclosed;	In case, donation to a single party exceeds Rs. 500,000, name of donee(s) shall be disclosed and where any director or his spouse has interest in the donee(s), irrespective of the amount, names of such directors along with their interest shall be disclosed;
Old	<p>Complete particulars of the aggregate amount charged by the company shall be disclosed separately for the directors, chief executive and executives together with the number of such directors and executives such as:</p> <p>(i) fees;</p> <p>(ii) managerial remuneration;</p> <p>(iii) commission or bonus, indicating the nature thereof;</p> <p>(iv) reimbursable expenses which are in the nature of a perquisite or benefit;</p> <p>(v) pension, gratuities, company's contribution to provident, superannuation and other staff funds, compensation for loss of office and in connection with retirement from office;</p> <p>(vi) other perquisites and benefits in cash or in kind stating their nature and, where practicable,</p>	<p>Complete particulars of the aggregate amount charged by the company shall be disclosed separately for the directors, chief executive and executives together with the number of such directors and executives such as:</p> <p>(viii) fees;</p> <p>(ix) managerial remuneration;</p> <p>(x) commission or bonus, indicating the nature thereof;</p> <p>(xi) reimbursable expenses which are in the nature of a perquisite or benefit;</p> <p>(xii) pension, gratuities, company's contribution to provident, superannuation and other staff funds, compensation for loss of office and in connection with retirement from office;</p> <p>(xiii) other perquisites and benefits in cash or in kind stating their nature and, where practicable, their approximate money values; and</p>

Old/ new	Fourth Schedule	Fifth Schedule
	<p>their approximate money values; and</p> <p>(vii) amount for any other services rendered.</p>	<p>(xiv) amount for any other services rendered.</p>
New	<p>Management assessment of sufficiency of tax provision made in the Company's financial statements shall be clearly stated along with comparisons of tax provision as per accounts viz a viz tax assessment for last three years.</p>	<p>Management assessment of sufficiency of tax provision made in the Company's financial statements along with comparisons of tax provision as per account viz a viz tax assessment for last three years.</p>
	<p>In case of royalties paid to companies / entities / individuals following shall be disclosed:</p> <p>(i) Name and registered address; and</p> <p>(ii) Relationship with company or directors, if any.</p>	<p>In case of royalties paid to companies / entities / individuals following shall be disclosed:</p> <p>(iii) Name and registered address; and</p> <p>(iv) Relationship with company or directors, if any.</p>



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