



MEMORANDUM ON THE COMPANIES ACT, 2017

MOORE STEPHENS

Shekha & Mufti
Chartered Accountants

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PREFACE

Corporate Law provides a framework within which formal business enterprises function and helps regulate a multitude of interactions between various stakeholders in the corporate sector. It also supports the infrastructure behind a country's commerce and trade.

The Companies Act of 1913 regulated Pakistan's corporate sector until being replaced by the Companies Ordinance, 1984. Whereas major amendments were incorporated through changes in corporate legislation in 2002, the last two decades have witnessed unprecedented growth in the sector, necessitating overhaul of controls in place.

The ways of doing and conducting business have become ever more complex in a global context and Pakistan has been following suit. The Securities & Exchange Commission of Pakistan took up the challenge and on November 11th of last year Companies Ordinance, 2016 was promulgated. Although it was soon struck down by the upper house of the Parliament, it has now survived as Companies Act 2017, with certain changes made by both houses of the Parliament.

The Companies Act, 2017 retains prevailing fundamental concepts. Amongst other things, it has eased the procedure for incorporation, induced electronic means in corporate compliances, provided more protection to shareholders and inculcated corporate governance principles. Also it has introduced certain concepts to counter and control unwarranted business activities. At the same time, however, the Commission has emerged more empowered.

With this summarization of the Companies Act, 2017, we aim to highlight key changes and new concepts worth the attention of reader, be it from the existing or proposed set ups. The Memorandum contains the comments which represents our interpretation of the legislation. We, therefore, recommend that while considering their application to any particular case reference be made to the specific wording of the Act

The memorandum can also be accessed on our website www.shekhamufti.com

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TABLE OF CONTENTS	PAGE
1. Commencement Date	5
2. New Concepts and Provisions	5
3. Incorporation of Companies and Matters Incidental	9
4. Increase in Capital	11
5. Share Certificates and Transfers	12
6. Board of Directors	13
7. Officers of the Company	16
8. Auditors	16
9. Accounts and Matters Allied	18
10. General Meetings	20
11. Reporting, Corporate Registers and Annual Return	22
12. Dividends	23
13. Related Party Transactions (RPTs)	23
14. Compromises and Arrangements	24
15. Prevention of Oppression and Mismanagement	25
16. Key Administrative Changes	26

SUB-INDEX

	PAGE		PAGE
1. COMMENCEMENT DATE	5	10. GENERAL MEETINGS	20
2. NEW CONCEPTS AND PROVISIONS	5	A. Statutory Meeting	20
A. Class of Companies	5	B. Extraordinary General Meeting	20
B. Roles and Functions	6	C. Annual General Meeting	20
C. Disclosures and Provisions	7	D. Notice of Meeting and Participation by Members	20
3. INCORPORATION OF COMPANIES AND MATTERS INCIDENTAL	9	E. Resolution of Members	21
A. Name of Company	9	11. REPORTING, CORPORATE REGISTERS AND ANNUAL RETURN	22
B. Correspondence Address	9	A. Register of Directors and Officers	22
C. Initial Subscription	9	B. Register of Members	22
D. Nominee of Single Member	10	C. Mortgage and Charges	22
E. Principle Line of Business	10	D. Annual Return of the Company	22
4. INCREASE IN CAPITAL	11	E. Supply of Information in Electronic Form	22
A. Issue of Shares – General Provisions	11	12. DIVIDENDS	23
B. Issue of Shares at Discount	11	A. Payment of Dividend	23
C. Allotment of Shares	11	B. Unclaimed Dividend & Shares will now vest with the Government	23
5. SHARE CERTIFICATES AND TRANSFERS	12	13. RELATED PARTY TRANSACTIONS (RPTs)	23
A. Share Certificates	12	A. Business Transactions	23
B. Share Transfers	12	B. Employees' Retirement Funds	24
6. BOARD OF DIRECTORS	13	C. Investments in Associated Companies and Undertakings	24
A. Eligibility & Composition of Board	13	14. COMPROMISES AND ARRANGEMENTS	24
B. Appointment and Election of Directors	13	A. Commission's Power to sanction Compromises and Arrangements	24
C. Proceedings of Directors	14	B. Amalgamation of Wholly Owned Subsidiaries in Holding Company	24
D. Powers and Duties of Directors	14	C. Easy Exit of Defunct Companies	24
E. Interest of Directors	15	15. PREVENTION OF OPPRESSION AND MISMANAGEMENT	25
F. Liability of Directors	15	A. Application to Court	25
7. OFFICERS OF THE COMPANY	16	B. Additional Grounds for Winding Up by Court	25
A. Chief Executive	16	C. Public Sector Entities	25
B. Company Secretary	16	16. KEY ADMINISTRATIVE CHANGES	26
8. AUDITORS	16	A. Jurisdictions and Powers	26
A. Appointment and Removal of Auditors	16	B. Filings with the Registrar and Registration Office	27
B. Qualification and Disqualification of Auditors	17	C. Penalties & Fines	28
9. ACCOUNTS AND MATTERS ALLIED	18		
A. Classification of Companies	18		
B. Inspection of Books of Accounts	18		
C. Financial Statements and Audit	18		
D. Signing and Authentication	19		
E. Reports and Compliance Statements	19		
F. Circulation of Accounts	19		
G. Filing with Registrar	19		

1. COMMENCEMENT DATE

The Companies Act, 2017 has come into effect on 30th May 2017, except for a section dealing with real estate companies, the enforcement of which has been deferred for the time being. The Companies Ordinance, 1984 has simultaneously been repealed except for certain sections concerning Non-banking Finance Companies.

2. NEW CONCEPTS AND PROVISIONS

A. Class of Companies

ij) Shariah Compliant Company

A company which conducts its business according to the principles of Shariah and is certified by the Commission for compliance has been termed as a "Shariah Compliant Company". A banking company is an exception to this concept, falling under the domain of the Central Bank.

Persons appointed or engaged for shariah compliance, shariah advisory or shariah audit shall be subject to fit and proper criteria and will have to fulfill the terms and conditions, as may be specified by the Commission.

It may be noted that listed companies are already required vide a SECP circular to provide additional disclosures so as to help assess their shariah compliance. Last year the FBR announced tax concessions for shariah compliant listed manufacturing companies.

ii) Free Zone Company

A Free Zone Company may be incorporated for carrying on business in an Export Processing Zone or an area notified by Federal Government as Free Zone. The names of such companies will have the parenthesis and alphabets 'FZC' at the end. Free Zone Companies shall be exempted from such

requirements of the Act as are to be notified by the Federal Government.

The Act offers protection of information pertaining to promoters, shareholders and directors of a Free Zone Company, if foreign nationals. However, the aforesaid protection shall not prevent disclosure where required by revenue authorities or for meeting Government's information sharing obligations under international laws, treaties or commitments.

iii) Agriculture Centric Companies

To promote corporate farming and to manage agriculture lending, the Act provides for incorporation of varying types of agriculture centric companies namely Agriculture Promotion Company, Producer Company and Collateral Management Company.

Any activity by such companies or their members which may be considered detrimental to the interest of farmers, lending institutions, commodity exchanges, consumers or other stakeholders, will attract penalties.

iv) Inactive Company

The introduction of 'Inactive Companies' aims to reduce reporting and other regulatory requirements for companies not actively engaged or contemplating to engage in business operations.

A company, other than a listed company, can obtain the status of an 'Inactive Company' if it is formed for a future project or simply to hold an asset or an intellectual property, provided it has no significant accounting transactions. Similarly, companies which have either not carried on any business or have not made significant accounting transactions, during the last two financial years, may also obtain the status of an inactive company.

A register of such companies will be maintained by the Registrar who can also enter therein, names of companies who fail to file financial statements or annual returns for two consecutive financial years.

v) Public Interest Company (includes Public Sector Company)

The concept though not entirely new, merits attention. The notion was brought in the year 2015, vide a SRO, primarily for the purposes of determining the financial reporting framework for such companies. The Act has now defined a Public Interest Company, which constitutes either of the following:

- A listed company
- A Public Sector Company
- A large sized Foreign Company
- A large sized Not for Profit Company
- A company in the business of providing essential public service e.g. a public utility company.
- A company holding assets in a fiduciary capacity for a broad group of outsiders such as a bank, insurance company, securities broker, pension fund, mutual fund or an investment banking entity.

A Public Sector Company was first defined in Public Sector Companies (Governance) Rules 2013. In essence it is a company where the Government owns, directly or indirectly, at least 51% shareholding or voting power (previously 50%) or has the power to elect majority of the directors.

vi) Restrictions on Real Estate Company (in abeyance until notified)

The Act has brought companies engaged in construction and development of residential and commercial projects under its ambit. Henceforth a project cannot be announced, publicized or advertised and no amount of any advance or deposit can be asked for and accepted unless an approval is obtained from the Commission. Before granting the approval

it will be ensured that the company has obtained relevant approvals and has disclosed all necessary information.

Further, a real estate company is now required to enter into a written agreement for accepting any advances or deposits and these payments will then be deposited in an escrow account opened in the name of project. The Commission is empowered to prescribe the books of accounts to be maintained and the financial reporting to follow.

B. Roles and Functions

i) Registered Valuers

Under the Act there are varying instances where services of professional valuers will be required by Companies to get valued their assets, liabilities or net worth. To facilitate and regulate the process, the Commission shall maintain a panel of registered valuers and for the purpose will prescribe regulations.

Significant penalties are imposed on valuers for contraventions, including imprisonment where a fraudulent intention is established.

ii) Registered Intermediaries

The Act has allowed filing of documents through intermediaries. To perform services as an intermediary, a person is required to possess qualifications, as may be specified, and to get itself registered with the Commission. Accordingly companies will now be able to choose from a pool of intermediaries comparatively better equipped to undertake compliance responsibilities on their behalf.

iii) Licensed Transfer Agent

Transfer of shares in certain companies, as may be notified by the Commission, shall be executed with the help of a duly licensed agent. The transferors and transferees of shares of such companies will have to appear before

a licensed agent to record their statements who shall then share a certified copy of such statements with the respective company for further action.

Such agents shall be responsible for the loss caused to any person due to a fault on their part, if determined by the Court while deciding a case pertaining to rectification of members' register.

C. Disclosures and Provisions

i) Beneficial Ownership held outside Pakistan

Beneficial ownership in listed securities of locally incorporated companies and its reporting is primarily covered in the Securities Act, 2015. Now reporting of ownership in companies incorporated outside Pakistan is being introduced.

Every Pakistani, whether or not a dual national, who is a substantial shareholder or an officer of a company incorporated in Pakistan (Pakistani Company), shall disclose his shareholding in a foreign company or body corporate, to the Pakistani Company, within 30 days of holding such position or interest or any change therein. The Pakistani Company receiving the information will report it to the Registrar through a special return, along with its Annual Return. The Pakistani company shall also report to the Registrar its own shareholding or interests in a foreign company or body corporate, along with its Annual Return.

From the date of commencement of this Act, all companies have been provided a period of 60 days for reporting the aforesaid information. This information will then be made part of the Companies Global Register of Beneficial Ownership to be maintained by the Commission.

The Commission vide SRO 546(I)/2017 issued on June 21, 2017 has prescribed two separate formats for compliance i.e. one for reporting by the beneficial owners to the companies and

second one by the companies to the Commission for entries in the Global Register.

The Commission has been empowered to share the information maintained in the Global Register with Federal Board of Revenue or any other agency, authority or court.

The Commission has been also vested with a power to direct a foreign company to furnish information or documents of its shareholding including beneficial ownership.

ii) Anti-Money Laundering

Every officer of a company is now responsible to take all reasonable measures to prevent commission of fraud, money laundering and other offences provided in the Money Laundering Act, 2010 with respect to the affairs of the Company.

On failure, an imprisonment and fine upto 3 years and 100 million is provided for, besides any punishment attracted under Anti-Money Laundering Act, 2010.

iii) Dispute Resolution through Mediation or Arbitration

The option to resolve disputes through mediation was available to companies by adopting enabling provisions through their Articles of Association. Moving further in the direction, the Commission will now maintain a "Mediation and Conciliation Panel". Any dispute between a company, its management or its members or creditors can be referred to any individual listed on the panel. Even during pendency of proceedings with the Commission or the Appellate Tribunal, either of the parties may request to take the matter to the panel. The Panel shall dispose of matters within a period of 90 days from the date of reference and forward recommendations to the Commission or Appellate Bench as the case may be.

Enabling provisions have also been inserted in the Act to enable a company to refer any existing or future issue for Arbitration in accordance with the Arbitration Act, 1940.

iv) Employment of persons with disabilities

Public Interest Companies with 100 or more employees will ensure a special quota of a minimum of 2% for employment of persons with disabilities.

v) Security Clearance of Shareholders and Directors

For the last few years companies have been submitting documents with the Commission for security clearance of foreign shareholders and directors by the Ministry of Interior. A provision made part of the Act empowers the Commission to obtain security clearance of any shareholder, director or other office bearer of the company as may be notified by the Federal Government.

3. INCORPORATION OF COMPANIES AND MATTERS INCIDENTAL

A. Name of Company

i) Restriction on Company Names

The names applied for, will now be reserved for 60 days and not 90 days. The Commission has been empowered to notify words and expressions which cannot become part of a company's name. This is besides the general power to label any proposed name as inappropriate or deceptive. Companies which are subject to license from the Commission, shall require prior approval of the proposed name.

The right of appeal to the aggrieved promoter continues to remain available. However, as it was the position earlier, the final verdict remains un-appealable before any court of law.

ii) Rectification/Change of Company's Name

The registrar always had the power to direct a company to change its name, if found in violation of the requirements. This power was exercisable within three years of the date of incorporation. This time limitation has now been done away with. Further, in case of non-compliance with directions given, the registrar can now assign a name of his choice to the company and enter it in the register of companies, he so maintains.

In case of change of name, whether by the Company on its own or under a direction, the former name will have to be mentioned, along with its new name for a period of 90 days, from the date of issue of Certificate of Change of Name. Under the repealed Ordinance this period was one year.

iii) Publication of Name by a Company

It has been made mandatory to display a certified copy of certificate of incorporation at every place of business of the company.

Besides name, registered office address, telephone number, fax number, e-mail and website addresses, if any, shall be printed on letter-head and all company documents, notices and other official publications.

B. Correspondence Address

A correspondence address is required to be provided for registration of Memorandum & Articles of Association. The correspondence address shall remain effective till the registered office of the company is established, within 30 days of incorporation.

C. Initial Subscription

The share subscription money shall be payable by the subscribers to the company within 30 days of incorporation and will have to be reported to the Registrar within 45 days of incorporation. The reporting will have to be supported by a certificate of a practicing Chartered Accountant or a Cost and Management Accountant.

Shares shall be deemed to be cancelled if the subscription money is not deposited within the prescribed time with simultaneous removal of the name of the relevant subscriber from the Register of Members. The Registrar has been vested with power to issue direction to the company, as deemed appropriate for compliance.

It is now expressly stated that shares taken by the subscribers to the Memorandum, on the formation of the company are deemed allotted and no Return of Allotment needs to be filed for such shares.

D. Nominee of Single Member

In a single member company the Act requires the subscriber to the Memorandum of Association, to nominate a person who becomes responsible for transfer of shares and management of the company's affairs in the event of his death.

E. Principle Line of Business

A general permission has been given to companies to operate in any lawful businesses, irrespective of their inclusion or not in the Memorandum of Association. Companies requiring special permission or license remain an exception.

The "principal line of business" (PLOB) of the company, however, is required to be inserted in the Memorandum of Association. PLOB means the business in which substantial assets of the company are held or from where substantial revenue is earned by the company, whichever is higher. Companies are required to report change in PLOB to the Registrar and submit the amended Memorandum of Association within 30 days thereof.

In case of existing companies the object stated at serial number 1 of the object clause shall be treated as their PLOB. So if it does not go along with the Company's main business, the company shall report its PLOB to the Registrar within such time from commencement of the Act, as may be specified, and furnish a revised copy of the Memorandum, stating its PLOB at serial number 1 of the object clause.

The name of the company is required to commensurate with its principal line of business. If it is in not conformance, the company may be issued a direction by the Registrar for change of name.

4. INCREASE IN CAPITAL

A. Issue of Shares – General Provisions

- Henceforth a special resolution will have to be passed for alteration of capital, including for increase in the amount of authorized share capital.
- A minimum of 15 and a maximum of 30 days have to be provided to members for acceptance/renunciation of shares offered under a further issue.
- Where shares are to be issued against non-cash consideration, the value of consideration shall be determined by a valuer, registered with the Commission.
- Public companies can earmark percentage of further issue for its employees under a stock option scheme.

B. Issue of Shares at Discount

Special resolution is now required for issuing shares at a discount, as against the earlier requirement of ordinary resolution. Moreover, the minimum period of company's existence, required for issuing shares at discount, has been increased from one year, after commencement of business, to three years.

A listed Company can only issue shares at a discount if the market price of its shares has remained lower than the par value, for a continuous period of past 90 trading days, immediately preceding the date of announcement by the board of directors.

The issue of shares at discount must be sanctioned by the Commission. However, the requirement shall not apply on a listed company if the discount percentage is 10% or less.

The Commission shall not sanction any resolution of discount issue, if the offer price is less than:

- 90% of weighted average daily closing price of shares for 90 prior days of announcement of discount issue, by the listed company
- For other than listed, break-up value per share based on assets (revalued not later than 3 years) or value based on discounted cash flow.

C. Allotment of Shares

The time period for filing of Return of Allotment has been increased from 30 days to 45 days. Company's auditors report confirming the receipt of amount and issue of shares to each allottee has to be filed along with. Where allotment is made for other than cash consideration, a valuation report will go along.

5. SHARE CERTIFICATES AND TRANSFERS

A. Share Certificates

ij) Shares in Electronic Form

From a date notified by the Commission, all companies formed shall have shares in book-entry form only. The existing companies are envisaged to replace their physical shares into book-entry form within a period of 4 years from commencement of the Act.

ii) Issuance of Share Certificates

The time limit for the issue of certificates of shares has been reduced from 90 days to 30 days from allotment. The certificates will now have to be delivered at the registered address of shareholder.

iii) Duplicate Shares

Duplicate certificates are required to be issued within 30 days of receipt of an application as against the previous 45 days. The timeline to communicate the reasons for not issuing duplicate certificates has been reduced from 30 days to 20 days of the receipt of application.

B. Share Transfers

ij) Transfer of Shares in a Private Company

The transfer of shares in a private company was the subject of its Articles of Association. In year 2015, over-riding procedures were brought through Companies (General Provisions and Forms) Rules, 1985. These have now been adopted through the Act as well. The salient feature is mandatory provision of right of first refusal to the existing members in proportion to their shareholding, both for the number of shares first coming for transfer and any shares renounced therefrom, at a price determined under a prescribed mechanism.

ii) Timelines for Transfer

The time frame for transfer of shares has been reduced. Companies are required to complete the transfer within 15 days of lodgment. In case of conversion of physical shares into book-entry form the time allowed is 10 days.

The time to notify the defect in the instrument of transfer and refusal of transfer by the board has been also fixed at 15 days of lodgment of transfer, in physical form and 5 days where shares are held in book-entry form.

iii) Shares of a Deceased Member

The shares of a deceased member shall be transferred to the legal heirs under a succession certificate or a lawful award. There is now no discretionary power with directors to relax the aforesaid requirements, as was available under the Companies Ordinance, 1984, upon obtaining an indemnity.

The Act now considers nominee of a deceased member as a trustee only who shall be responsible to facilitate the transfer of shares to the legal heirs, in accordance with the Islamic law of inheritance and in case of non-Muslim members, as per the respective law.

6. BOARD OF DIRECTORS

A. Eligibility & Composition of Board

i) Director shall hold National Tax Number

The Act requires a director to hold a National Tax Number (NTN). Simultaneously, it has also empowered the Commission to notify exemptions from this requirement. Keeping in view the difficulties of promoters, a notification has already been issued by the Commission, vide Circular 15 of 2017 whereby a general exemption has been granted for a period of 2 years to directors of Small Sized and Agriculture Promotion Companies.

ii) Nominee Directors

In the repealed Ordinance, directors were required to be members of the Company, i.e. hold at least one share in the Company. There were exemptions to government, institution and authority but not to corporate nominees. The section has now been re-phrased and resultantly nominated directors of effectively all legal persons, including corporate members, will no longer be required to hold any shares in the company.

iii) Cap on Directorship

The Act intends to fix an upper limit on the number of directorships an individual can hold, including that of an alternate director; excluding directorship in a listed subsidiary. The limit is yet to be specified by the Commission but contrarily the sub-section to this provision states that a person holding directorship in 7 companies shall ensure compliance with this section within one year. Thus clarity on the maximum number remains pending. For listed companies similar restriction is already in place through Code of Corporate Governance.

iv) Female Director in Public Interest Companies

Public interest companies are required to have a female member on their board.

v) Independent Directors Database

A database of independent directors shall serve as means for selection by companies, required to appoint independent directors. The responsibility to exercise due diligence before making such selection will rest with the company making such appointment and will be disclosed with justification in the notice of general meeting. The requirement has been relaxed till a notification is issued by the Commission

vi) Consent to act as Director mandatory in all Companies

Public companies were required to obtain written consents from intending directors/CEO, prior to their election/appointment. Now all companies are required to do so.

vii) Chairman in Listed Companies

A provision, similar to the requirement of CCG, has been inserted in the Act requiring appointment of a chairman by listed companies from amongst the non-executive directors.

B. Appointment and Election of Directors

i) First Directors

The first directors of a company are appointed at the time of incorporation. Their number can be increased before the first AGM by appointing additional directors in a general meeting. No such provision was available to newly incorporated companies in the repealed Ordinance.

ii) Reporting of Delay in Holding Elections

A delay foreseen in the holding of election of directors is to be reported to the Registrar at least 45 days before the due date. The Registrar can extend time for 90 days and thereafter give further time through directions to hold the election.

iii) Declaring Elections invalid by the Court

Members holding 10% of voting power in the company may apply to the Court for declaring election of directors invalid. Previously the minimum percentage required was 20%.

iv) Fresh Elections can now be demanded in all Companies

The option of demanding fresh election was available to an acquirer of a minimum of 12.5% shares in a listed company. Now fresh elections can be asked for, in all type of companies, with no specific threshold of acquisition given any more. A member may require the company to hold fresh election of directors if he has acquired shares, sufficient enough to get him elected as a director on the board.

C. Proceedings of Directors**i) Remote Participation in Board Meeting**

The directors of public companies in the past have been allowed participation in a board meeting through video conferencing or audio visual. With the Act it seems the option will now be available to listed companies only.

ii) Lack of Quorum due to Casual Vacancy

Addressing a practical issue, the Act tackles circumstances where there are not enough directors to fill in a casual vacancy on the board. It clarifies that presence of all remaining directors will be deemed to fulfill quorum requirements.

iii) Circular Resolution

The notion of 'Circular Resolution' was previously covered in Table A, and adopted through the Articles of Association whereby matters, not reserved for meetings, could be approved by the board through circular resolution. This notion has now been formally adopted by the Act. It requires such a resolution to be noted at the subsequent board meeting and be made part of the minutes.

iv) Retention of record of Board Meetings

Records of all circular resolutions and minutes of board meetings must be maintained in physical form for at least 10 years and for good in electronic form.

D. Powers and Duties of Directors**i) Investment & Divestment**

The Act, in addition to powers retained from repealed Ordinance, requires the board to approve acquisition of a controlling or substantial stake in a company. As regards divestment, the board of private companies were empowered to sell, lease or dispose of undertaking or a sizeable part thereof. Now private companies are also required to take approval of the shareholders for such transactions. The Act has also removed the related ambiguity by defining what constitutes an 'undertaking' and 'sizeable part'.

The board of directors of a listed company should have a viable alternate business plan where it intends to sell or dispose of an undertaking, which may lead to a closure of business or winding up of the company.

ii) Fiduciary Responsibilities emphasized upon

A new provision has been inserted in the Act which explicitly binds directors to act in accordance with the provisions of the Act and Company's Articles of Association and to fulfill their fiduciary responsibilities.

If a director commits a breach, default or is guilty of negligence from the requirements of Articles of Association and any decision of the board, his action may be ratified by the company through a special resolution.

iii) Good Governance

Code of Corporate Governance is enforced on listed companies via listing regulations and on public sector entities through Rules issued by the SECP. A voluntary framework of corporate governance for unlisted entities is also in place.

Now, specific powers have been given to SECP to introduce frameworks for all or any type of companies so as to ensure good governance practices and compliance.

iv) Prohibition on Assignment of Office

Assignment of office by a director to any other person, previously allowed under the authority of special resolution, has now been prohibited and any such appointment shall be void *ab-initio*.

E. Interest of Directors

i) Loan to Directors

The Act has simplified the provisions relating to loans to directors but has made its application across all type of companies. A company can now make loan to any of its director or of its holding company or to his spouse or minor children or provide guarantees or security in connection with any loans made by any person to them, subject to the prior approval of members in general meeting. Listed companies, additionally, will require prior approval of the Commission.

ii) Contracts and Arrangements

The repealed law considered directors to be interested in an arrangement or contract if their spouse or minor children were interested. The Act has expanded to it and has replaced

minors with children and has added a directors' parents as well to the list.

In listed companies a director with material personal interest shall not remain present in the meeting while the related matter is being discussed. Contracts or arrangements wherein majority of directors are interested shall have to be approved by the members in a general meeting.

Companies are no more required to disclose terms of appointment of chief executive, whole-time director or company secretary in their directors' report. Circulation of terms of CEO's appointment is also no more required.

F. Liability of Directors

i) Indemnification of Directors

Directors and officers cannot be exempt or indemnified from a liability arising due to negligence, default, breach of duty or breach of trust in relation to the affairs of Company. The Act, however, has explicitly allowed the Company to procure insurance or third party indemnity for directors.

ii) Protection to Independent and Non-Executive Directors

The Act provides protection to independent and non-executive directors of listed and Public Sector Companies. They shall be liable only where there has been an act of omission and commission.

iii) Disqualification of Directors by Commission

The Commission has been entrusted with the powers to disqualify a person to hold office of a director for a period up to five years. The Act has listed down 15 counts, a person falling under any of them may face disqualification proceeding of Commission. A disqualified person will be personally liable for relevant debts of the company, if he acts in contravention of a disqualification order.

7. OFFICERS OF THE COMPANY

A. Chief Executive

i) First Chief Executive

The first chief executive officer will now be determined by the subscribers to the Memorandum of the Association i.e. at the time of incorporation, while nominating the first directors. The term expires on the date of first AGM, unless a shorter period is fixed.

ii) Term of Chief Executive

The tenure of subsequent Chief Executive remains at 3 years. However, in case of appointment under a casual vacancy it may end earlier, if the directors elected in the next election go for a fresh appointment.

iii) Government nominated CEO

The Government can nominate a CEO in companies where it also nominates the majority of directors while for removal it needs to have more than 75% of the voting power. In a Public Sector Entity it has an absolute authority to nominate the CEO.

B. Company Secretary

Henceforth, unlisted public companies will also be required to have a company secretary, meeting the prescribed qualification criteria.

8. AUDITORS

A. Appointment and Removal of Auditors

i) First Auditor

The time period for the appointment of first auditors has been extended from 60 days to 90 days of incorporation. The power, thereafter, solely vests with the Commission.

ii) Subsequent Auditor

The process of appointment of subsequent auditors in the AGM has now been made part of the Act. This includes recommendation of the board, consent of the proposed auditor and reference in the notice of AGM.

iii) Remuneration of Auditor

Henceforth the remuneration of auditor will be approved in the general meeting only.

iv) Appointment of another Auditor

The provision of the repealed Ordinance in respect of appointment of auditors, other than retiring auditors, has been revised. Member having a shareholding of not less than 10% and holding auditors consent may propose another auditor for appointment in the AGM.

v) Casual Vacancy

In case of mid-term removal of auditors, the board has been authorized to fill the vacancy with the prior approval of the Commission.

B. Qualification and Disqualification of Auditors***i) CMA can also Audit***

Besides a Chartered Accountant, The auditor of a private company having paid up capital less than Rs. 3 million can be a Cost and Management Accountant as well. Subsidiaries of public companies, however, do not get this option.

ii) List of Disqualifications Enhanced

List of disqualifications has been amended to include a person:

- who is indebted to the company, has given a guarantee or provided any security in connection with the indebtedness of any third person to the company or directly or indirectly, has business relationship with the company other than in the ordinary course of business of such entities;
- 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;
- who is not eligible to act as auditor under the code of ethics as adopted by the Institute of Chartered Accountants of Pakistan or the Institute of Cost and Management Accountants of Pakistan, as the case may be.

9. ACCOUNTS AND MATTERS ALLIED

A. Classification of Companies

The latest criteria for classification of companies for the purposes of accounting framework and financial reporting was prescribed by SRO929(I)/2015. The Third Schedule to the Act now specifically caters to it. Fourth and Fifth Schedule to the Act have also been amended.

i) Types of Companies and Basis

The Companies are broadly classified in the following four types:

- Public Interest Companies
- Large Sized Companies
- Medium Sized Companies
- Small Sized Companies

A Public Interest Company includes within itself, a Public Sector Company as well. For the remaining three types the basis of categorization are:

- size of paid-up capital;
- amount of turnover; and
- number of employees

Included in large and medium sized companies are Not for Profit Companies and Foreign Companies, depending upon their relative size.

ii) Accounting Framework

- Public Interest, Listed and Large Sized Companies (unlisted) have to adopt International Financial Reporting Standards. Listed companies will adopt the Fourth Schedule while the others shall comply with the Fifth Schedule.
- A Medium Sized Company is required to comply with International Financial Reporting Standards for SMEs and the Fifth Schedule.
- For Small Sized Companies the Accounting and Financial Reporting Standards for SSEs, as issued by the Institute of Chartered

Accountants of Pakistan, remain in force together with the Fifth Schedule.

- Along with the applicable frameworks from above, a Not for Profit Company will also apply the standards specifically relevant to them.

The Commission has the power to grant exemptions from the requirements of relevant schedules to a company or a class of company.

B. Inspection of Books of Accounts

i) By Directors

The provision enabling members to inspect books of accounts of the Company has been done away with. On the other hand inspection by directors has been facilitated by instructing officers and employees of the company to give all assistance during the course of inspection.

ii) By Commission

The Commission retains the power to inspect books of accounts for justified reasons. The Act has empowered the officer conducting inspection, to take possession of documents for 30 days, if they constitute evidence.

C. Financial Statements and Audit

i) Period for holding first AGM reduced

With the change in the maximum period of holding the first AGM, the first financial statements now also have to be laid not later than 16 months, from the date of incorporation.

ii) Exemption for private and single member companies

A private company with paid up capital upto Rs.1 million is not required to have its financial statements audited. Such company, if a parent, is also not required to prepare

consolidated financial statements if the subsidiary's paid up capital also does not exceed Rs.1 million.

Single member companies are excluded from the requirement of laying financial statements in AGM. Nonetheless, they remain subject to audit.

iii) Revaluation surplus

The provisions concerning surplus arising out of revaluation of fixed assets, as they were in the repealed Ordinance, have not been retained in the Act.

iv) Quarterly Financial Statements

Gist of certain circulars and notification issued under the repealed Ordinance has now been made part of the Act. Overall the requirements, procedures and timelines remain the same.

A company which seeks extension in holding its Annual General Meeting may also make an application to extend the period for filing its first quarter accounts.

D. Signing and Authentication

Private Companies with a paid up capital upto Rs.1 million will ensure that financial statements accompany an affidavit of CEO or directors confirming their approval by the board.

Code of Corporate Governance requires CFO of a listed company to sign the financial statements. This is now required by the Act as well.

E. Reports and Compliance Statements

i) Chairman's Review Report

Listed companies have been directed to enclose a chairman's report with audited financial statements. Such a report shall include Chairman's review of the overall performance of the board.

ii) Directors Report

Contents and details to be included within the directors' report have been revised for public companies and their private subsidiaries. In addition, the Act now prescribes the details which must be included in a business review by the board of a listed company.

A private company with a paid up capital not exceeding Rs.3 million is exempt from preparing the directors report, unless it is subsidiary of a public company.

iii) Statement of Compliance

Vide the listing regulations, companies are obligated to provide a Statement of Compliance, reviewed by the auditor. This requirement has been included in the Act and may be extended to other class of companies by a general or special order of the Commission.

F. Circulation of Accounts

The Act permits electronic circulation of audited financial statements and accompanying reports to its members. Obligates listed companies to place their accounts and reports on the website.

G. Filing with Registrar

- Listed Companies will continue to file their audited financial statements within 30 days of AGM. All other companies now have 15 days.
- A private company, not being subsidiary of a public company, with a paid up capital not exceeding Rs.1 million will file unaudited financial statement within 30 days of Annual General Meeting.
- A private company with a paid up capital of Rs.10 million or lower is exempt from the requirement of filing, this limit being Rs.7.5 million in the repealed Ordinance.

10. GENERAL MEETINGS

A. Statutory Meeting

The repealed law required public companies to hold this meeting between the fourth and sixth month of being entitled to commence business. The Act now requires it to be held within 180 days of being entitled to commence business or nine months of incorporation, whichever is earlier.

There is no need to hold this meeting if first AGM of the Company is held before the time to hold statutory meeting lapses.

B. Extraordinary General Meeting

Under the Companies Ordinance, 1984, a company could hold its extraordinary general meeting with a shorter notice period, where directors make a request to the Registrar. The Act has denied listed companies from having a reduced notice period. Non-listed companies can still do so and that too without going to the Registrar, provided all members entitled to attend agree to it.

C. Annual General Meeting

i) SMCs now Exempt

Single member companies are not anymore required to hold annual general meeting. Recording of decisions in the minutes book, signed by sole member or director, would suffice.

ii) Timing of holding AGM

- Time to hold First AGM has been reduced. It is now 16 months from the date of incorporation instead of 18 months; extendable by 30 days.
- The maximum period of four months for holding AGM, from the financial year end, has been substituted with "one hundred

and twenty days". As result the maximum due dates for holding of AGM for companies with different year ends shall be as follows:

Year End	Due Date of AGM
30 th June	27 th October
31 st March	29 th July
30 th September	28 th January
31 st December	30 th April (except in leap year) / 29 th April (in leap year)

- The requirement to manage time lag between two AGMs i.e. 15 months has been done away with.

D. Notice of Meeting and Participation by Members

i) Notice to Directors

The Act explicitly requires circulation of notice to directors to ensure its circulation to those who are not members of the Company.

ii) Publication of Notice in National Dailies

With consolidation of stock exchanges, notice will now be published in English and Urdu languages in daily newspapers of respective languages, having nationwide circulations.

iii) Town hosting AGM

Listed companies can hold their general meeting in the town, nearest to one hosting the registered office.

iv) Participation through video link

The option to attend and vote in general meetings through video-link and postal ballots has now been made part of the Act and permitted to all companies. A listed company has to provide facility of video link, if members residing in a particular city, having not less 10% of the paid up capital, demand for it. The provision of such facility is required to be disclosed in the notice of meeting.

v) Poll and Secret Ballot

The provision related to demand for poll by members has been amended to have a single criteria only; minimum 10% of shareholding. Secret ballot can also be conducted on the desire of chairman or on demand of member, representing 1/10th of voting power.

vi) Proxies

While calculating 48 hour time for lodgement of proxies, any part of the day (hours) falling in a non-working day will be excluded.

E. Resolution of Members**ij) Members Resolution by Circulation**

In an un-listed company, members can now pass a resolution without calling a meeting i.e. by circulation, to the exclusion of matters which are domain of the AGM.

ii) Preservation of Record

Records of members' resolutions and minutes of general meetings are now required to be preserved both physically and in electronic form, respectively for 20 years and permanently.

11. REPORTING, CORPORATE REGISTERS AND ANNUAL RETURN

A. Register of Directors and Officers

i) Statutory Reporting

The statutory return for reporting appointment of directors and other officers or any change therein has been extended from 14 days to 15 days of appointment or change as the case may be.

ii) Rectification of Register

Similar to provisions applicable to Register of Members, the Court has been vested with the power to make rectification in the Register of Directors if name of any person is fraudulently or without sufficient cause entered or omitted from register of directors.

iii) Inspection of Register

A register of director and other officers continue to be open for inspection by any member or any other person. However, a person seeking to inspect the register must make a request to the company communicating name, address, authorized person in case of a company and purpose for which the information is to be used.

B. Register of Members

i) Period of closure reduced

The company's power to close Register of Members in a whole year has been reduced to 30 days from the earlier 45 days. The Commission has the power to grant extension for a further period of 15 days.

ii) Certified Copies

The time to issue certified copies of the register has been reduced from 10 days to 7 days, exclusive of the days on which the transfer book of the company is closed. Members are

required to disclose the purpose of seeking information.

C. Mortgage and Charges

The time period for the registration, modification and satisfaction of mortgage or charges has been increased from 21 days to 30 days.

D. Annual Return of the Company

i) Listed Companies also have 30 days

The time for filing of annual return by listed companies has been reduced from 45 days to 30 days, thus bringing them at par with unlisted companies. However, the Registrar remains empowered to give them an extension up to 15 days.

ii) Companies with unchanged particulars

There is no need to file the Annual Return by any type of company if the particulars remain unchanged since the last return filed. This fact, however, has to be communicated by companies to the Registrar in the manner specified.

Single member companies and private companies with capital up to three million are exempt from this communication.

E. Supply of Information in Electronic Form

The information, notices and accounts or any other document to be provided by the Company to its members may be provided electronically after a notified date. For the purpose, email addresses provided by the members shall be used. Members will bear the cost where they require supply of physical documents.

12. DIVIDENDS

A. Payment of Dividend

- Dividend in kind can be distributed only in the form of shares of a listed company.
- The provision relating to payment of cash dividend through cheque or warrant has been made part of the Act.
- Listed company will have to pay its cash dividend through electronic mode, directly into bank account of the shareholder.
- A company will be able to withhold dividends of members who have failed to provide complete information to the company.

B. Unclaimed Dividend & Shares will now vest with the Government

- Dividend and share certificates, unpaid and unclaimed for three years, shall vest with the Federal Government, after giving a 90 days' notice to the shareholders.
- The unpaid or unclaimed dividend shall be deposited into a special account opened by the Federal Government while shares or other instruments will be delivered to the Commission who may sell them and deposit the proceeds to credit of the special account.
- Owners to the aforesaid shares or dividend may file a claim with the Commission within 10 years from the date of any amount is credited in this respect to Federal Government's account.
- All companies will file with the Commission a return within 30 days of the close of the financial year disclosing unclaimed shares and dividends, as appearing in its books.

13. RELATED PARTY TRANSACTIONS (RPTs)

A. Business Transactions

Provisions relating to related party transaction have been made part of the Act. As compared to the requirement of the Code of Corporate Governance, the provisions of Act in relation to RPTs are applicable on every company.

ij) Approval by Board or Shareholders

Companies can enter into contracts or arrangements with related parties as per policies approved by the board, subject to conditions specified by the Commission. Any contracts or arrangements wherein majority of directors are interested shall be approved by a special resolution of members.

ii) Board's authority in case of violation

The board may annul any contract or arrangement entered into by a director or employee with a Related Party, without consent of board or shareholders. The interested or concerned director will have to indemnify the company for any loss it incurs.

iii) Reporting and Record keeping

The details of all contracts or arrangements entered into with RPTs are required to be disclosed in the board's report to the shareholders. The justification of entering into such arrangements shall also be included in the report. Furthermore, the records related to RPTs shall be maintained by the Company in accordance with the requirements specified by the Commission.

iv) Transaction with Directors

The Act instructs all companies to carry out asset purchase or sale transactions with its directors against cash consideration only. Unless there is prior approval of members for non-cash basis, duly supported by a valuation of the consideration.

B. Employees' Retirement Funds

In addition to Provident Fund, the Commission has jurisdiction over all types of employees' contributory funds, be it pension or any other contributory retirement fund. Accordingly, investments made by such funds shall also be governed under this Act.

C. Investments in Associated Companies and Undertakings

Certain conditions prescribed through the Companies (Investment in Associated Companies or Associated Undertakings) Regulations, 2012 have been brought in. The following major changes have been made.

i) Common Independent Directorship

The definition of "associated companies" and "associated undertakings" have been modified to exclude association on the basis of common directorship of a person appointed as an "independent director".

ii) Benchmark Rate of Return

Commission can now fix a benchmark rate and investment should yield higher of this rate or the borrowing cost of the Company. The return has to be recovered on a regular basis in accordance with the terms of the agreement, failing which the directors shall be personally liable to make the payment.

iii) Financial Health of the Company

In case of loan investment, the directors of the investing company shall certify that the investment is being made after due diligence and the borrowing company is financially healthy to repay the loan as per agreed terms.

14. COMPROMISES AND ARRANGEMENTS**A. Commission's Power to sanction Compromises and Arrangements**

Rather than High court, it is now the Commission which has the power to sanction scheme of arrangements and reconstructions between a company and its creditors or any class of them or between the company, its members or any class of them or reconstruction or amalgamation of companies or any division of a company.

The concerned Minister-in-Charge of the Federal Government has been granted authority to notify such companies or class of companies or having such capital where the powers of the Commission shall be exercisable by the Court.

B. Amalgamation of Wholly Owned Subsidiaries in Holding Company

No approval of the Commission or the Court is required for amalgamation of wholly owned subsidiaries and sub-subsidiaries into their parent and ultimate parent company respectively. Similarly, two or more wholly owned subsidiaries of a single parent company can amalgamate with each other as a single company. The authority has been vested with the respective board of directors.

C. Easy Exit of Defunct Companies

The regime is already in place under repealed Ordinance through regulations. The provisions have been included in the Act for easy exit of a company which has ceased to operate and has no assets and liabilities.

15. PREVENTION OF OPPRESSION AND MISMANAGEMENT

A. Application to Court

The required shareholding or interest for filing application to the Court against oppression and mismanagement, respectively by the members or creditors has been reduced from 20% to 10%.

B. Additional Grounds for Winding Up by Court

Several amendments have been incorporated in the provisions related to winding up of companies. The most significant one is the introduction of following additional grounds for winding up by Court:

- if the company has made a default in filing with the registrar its financial statements or annual returns, for immediately preceding two consecutive financial years
- is conducting its business in a manner oppressive to the minority members or persons concerned with the formation or promotion of the company
- if the sole business of the company is the licenced activity and it ceases to operate, consequent upon revocation of the license granted by the Commission or any other licensing authority
- if a license granted under section 42 to a company has been revoked or such a company has failed to comply with any of the provisions of section 43.
- if a listed company suspends its business for a whole year

C. Public Sector Entities

The Minister in charge of the Federal Government can declare a public sector company in financial and operational problems as sick company to facilitate its rehabilitation, reconstruction and reorganization. It has been expressly provided that provisions for rehabilitation of sick public sector companies, are not in derogation of any other law regarding rehabilitation of any entity.

16. KEY ADMINISTRATIVE CHANGES

A. Jurisdictions and Powers

ij) Jurisdiction of High Courts

The High Court of the province, hosting the registered office, shall have exclusive jurisdiction under the Act with respect to the company. Each High Court shall have a Company Bench constituted on a permanent basis. A Registrar of Company Bench shall also be designated.

Procedures to be followed by the Court have been laid down in detail. The salient ones being:

- time period to decide the petition has been extended from the existing 90 to 120 days from the date of presentation of the case.
- provisions of the Qanun-e-Shahadat 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.
- appeal against judgment of the High Court may be filed in the Supreme Court within 60 days of the order.

ii) Powers and Functions of SECP

- It has been clarified that powers and functions of the Commission, as provided under the Act, are in addition to the powers and functions it has been granted under the Securities and Exchange Act, 1997.
- Under the repealed Ordinance the Federal Government and the Commission were empowered to make references to the Court. Such powers of Federal Government have now been vested in the hands of the Minister-in-charge.

iii) Power of the Registrar to Call for Information or Explanation

In the repealed Ordinance, no time was specified to comply with the notice of the registrar calling for any information or explanation. To ensure timely compliance, the Act has specified a time period of 30 days for the purpose.

iv) Seizure of Documents by Registrar, Inspector or Investigation Officer

- If a registrar has reasons to believe that certain documentary evidence relating to the company or its officers can be useful in proceedings or investigation, he may, with prior permission of the Commission, enter such premises to seize or take possession of such evidence. In the past, the power to permit such an action was reserved with the Magistrate or the Court.
- Moreover, the Commission now has the authority to pass an order for freezing accounts, securities and other movable property where it has reason to suspect proceeds of crime and other offence under the Act or any administered legislation.

v) Serious Fraud Investigation and Relevant Powers of the Commission

- The Commission has been authorized to investigate serious offences relating to a company including cases involving a false statement, material falsifications in books of accounts, forgery and deception. The Commission may also request the Federal Government to form a joint investigation team to be headed by a senior officer of the Commission where the matter under investigation substantiates to be of public importance.

B. Filings with the Registrar and Registration Office***i) Service and Authentication of Documents***

- Courier service and electronic means have been added for service of documents to the Commission, Registrar, Company or Members.
- The process of authentication of documents, whereby any document requiring authentication may be signed by an officer or a representative, authorized by the Board of Directors (already implemented by the SECP through a notification) has now been adopted through the Act as well.

ii) Acceptance of Documents presented after prescribed time

Filing of statutory returns and other documents with registrar by the companies, except public interest companies, after the prescribed period may be accepted on payment of additional fee. The schedule for payment of additional fee, together with associated timelines have been revised as follows and made part of the Act. Previously additional filing was prescribed through rules.

- within 90 days, a fee equivalent to two times;
 - within 180 days, a fee equivalent to three times;
 - within 01 year, a fee equivalent to four times;
 - within 02 years, a fee equivalent to five times;
- No proceedings shall be initiated against the company or any of its officers on account of delay in filing made within the period specified above.

iii) Electronic Filing of Documents

- The drive to avail electronic platform has been prioritized by SECP for quite some time now. Enabling provisions have been added in the Act, for filing of statutory returns, applications and other documents to SECP electronically.
- For electronic filing the documents are required to be authenticated, as required under the Electronic Transactions Ordinance, 2002.
- The Commission has been given authority to notify a cut-of date making electronic filing mandatory for all companies.

iv) Rectification of Data

- To facilitate Companies, the registrar may record rectification of records by allowing filing of revised document and obtaining necessary evidence.
- A Company may be ordered by the Commission to submit a special return for rectifying its record maintained at SECP. The return so specified shall be signed by all the directors who will be responsible for the loss caused for providing incorrect information in the return.

v) Destruction of Physical Record by Commission

The record of the company, maintained by the registrar and the Commission under this Act or the company law, shall be converted into electronic form and physical record shall be destroyed after a specified time. The record converted into electronic form shall be admissible as evidence in all legal proceedings.

C. Penalties & Fines

- A standard scale has been provided with penalties ranging from Level 1 to Level 3, each with its upper threshold of pecuniary fine. Most sections of the Act attracting penalty states the level in which the default falls.
- The Standard Scale consists of-

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

- Besides there are specific penalties and/or punishment, as the case may be, for certain defaults including false statement, falsification, forgery, fraud and deception, wrongful withholding of property and non-compliance of directives etc.
- Where the Act does not specify penalties, contravention with the relevant provision will attract a penalty of level 3 on the standard scale. Previously, the upper limit was set at Rs.1 million and Rs.100,000/- for each day the default continued.
- Offences of provisions of the Act punishable with imprisonment shall be taken up by sessions court or court notified under Section 37 of the Securities & Exchange Commission of Pakistan Act, 1997

Contact Us

PRINCIPAL OFFICE

C-253, P.E.C.H.S., Block 6,
Off Shahrah-e-Faisal,
Karachi, Pakistan.

P: + 92 21 34374811-15

F: + 92 21 34544766

info@shekhamufti.com

BRANCH OFFICE

Office No.4, 3rd Floor,
Rehman Plaza,
Queens Road,
Off: The Mall,
Lahore – Pakistan.

P: + 92 42 36298231-33

F: + 92 21 36298234

info.lhr@shekhamufti.com

www.shekhamufti.com

