

# Amendments in the Company Law

Key changes in  
the Companies Act,  
2017

May 2020



A·F·FERGUSON&Co.

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## ***Foreword***

This document describes a summary of the key changes made in the Companies Act, 2017 (CA 2017) through the Companies (Amendment) Ordinance, 2020.

The Companies (Amendment) Ordinance, 2020 has been promulgated by the President of Pakistan under Article 89 of the Constitution of Pakistan (the Constitution).

Under the Constitution, an Ordinance shall be laid before both Houses of the Parliament and if not enacted with or without amendments, shall stand repealed at the expiration of 120 days from its promulgation or, if before the expiration of that period a resolution disapproving it is passed by either House, upon the passing of that resolution. The Ordinance can be extended once for a similar other term by either House.

This document can also be accessed on our website [www.pwc.com/pk](http://www.pwc.com/pk).

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Note: Order of presentation does not necessarily depict importance.

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## **Company incorporation and commencement of business**

### **1. Cancellation of shares if initial subscription money not timely paid**

If initial subscription money was not timely paid into the company by the subscribers to the memorandum, the shares they subscribed to were considered cancelled.

This provision has now been removed.

### **2. Commencement of business certificate**

CA 2017 had done away with the requirement of obtaining a 'commencement of business certificate' from the registrar by public companies before they could commence business. This requirement has now been reinstated.

### **3. Concept of common seal done away with**

The requirement for every company to have a common seal has been done away with.

### **4. Requirement to have the principal line of business commensurate with the company name**

CA 2017 brought a concept that principal line of business of a company is to be commensurate with the name of company.

This requirement has now been amended so that the principal line of business of the company should not be inconsistent or contradictory with the name of the company.

### **5. Timing for filing amended articles with registrar**

On amendment by a company of its articles of association, time for filing those amended articles with the registrar has been reduced from 30 days to 15 days.

## **Allotment of shares**

### **1. Timing for filing return as to allotment**

The timing for filing return as to allotment has been reduced from 30 days to 15 days.

### **2. Requirement of auditor's report confirming receipt of cash consideration on allotment**

The requirement of submitting auditor's report regarding receipt of cash consideration against allotment of shares in cash along with the return as to allotment of shares has been done away with and replaced with a declaration from the chief executive.

## **Relaxation of certain restrictions in respect of private and unlisted public companies**

### **1. Pricing mechanism at sale of shares**

CA 2017 introduced a requirement that seller of a private company's share is to first offer the shares to other shareholders at a price to be determined in accordance with a specified mechanism. The condition of determining the offer price in accordance with a specified mechanism has been done away with.

### **2. Further issue of shares**

Private companies have now been allowed to issue further shares to any person subject to the articles and special resolution instead of first offering these to existing shareholders in proportion of their shareholding. A consequential amendment to the definition of private company has also been made.

In case of a private company also now shares may be offered to any person, either for cash or for consideration other than cash.

### **3. Employee stock options**

Private companies have now also been allowed to issue shares under the employee stock option plans under the authority of special resolution, in accordance with the articles and subject to such specified conditions.

### **4. Buy back of shares**

Unlisted public and private companies have now also been allowed to buy back their own shares. However, they cannot keep those as treasury shares and must cancel them.

However, buy back through tender offer in all cases has been restricted and now it can only be through security exchange as may be specified. It seems this change was only meant for listed companies whose shares are quoted on exchange.

## **General meetings and resolutions**

### **1. Place of general meeting of listed companies**

Listed companies are required to hold their general meetings in the town where their registered office is situated.

The Commission has now been empowered to allow, on the application of such company and for reason to be recorded in writing, to hold a particular general meeting at any other place.

### **2. Shorter notice of meeting in case of listed companies**

Companies, other than listed companies, can convene their general meetings at shorter notices if all the members entitled to attend and vote so agree. A corresponding provision for meetings of listed companies in case of an emergency affecting the business has now been added and the Commission has been empowered to authorise convening a general meeting by a listed company at shorter notice on the application of such company and for reasons to be recorded in writing.

Further, in case of a listed companies the Commission has been empowered to allow that a special resolution may be proposed and passed at a meeting of which less than 21 days' notice has been given.

### **3. Disposal of undertaking, subsidiary, remitting debt, etc.**

Resolution of general meeting for board to do certain acts like dispose of an undertaking or a sizeable part thereof, dispose of a subsidiary, remit, give relief or extend time against debt outstanding is now required to be a special resolution.

### **4. Members to act in good faith**

Under the CA 2017, a responsibility was placed onto the members of a company to act in good faith while exercising powers as a shareholder at the general meetings. This responsibility has now been done away with.

## ***Unclaimed shares, modarba certificates and dividend***

### **1. Withdrawal of federal government's right established in unclaimed shares, modarba certificates and dividend**

CA 2017 had introduced a concept of federal government's right where shares, modarba certificates or dividend that remained unclaimed for a certain period of time. All such unclaimed shares, modarba certificates or dividend were to vest to federal government after a certain period of time and were to be paid into a fund named 'Investor Education and Awareness Fund'.

All such provisions have now been withdrawn.

### **2. Unpaid dividend to be put into a separate bank account**

It has now been made mandatory that within 15 days of the expiry of the statutory period of paying dividend to the shareholders, any unpaid dividend shall be deposited by the company to a separate profit bearing account with a scheduled bank, which account could only be used by the company for payment of unpaid dividend.

Within 90 days of such transfer to the separate account, the company shall place particulars of such unpaid dividend on its website required to be maintained under any law or as specified.

The amount of profit generated from the above account shall be used by the company for its corporate social responsibility initiatives and specified purposes.

Also, the company shall make appropriate disclosures in its financial statements providing details of amounts transferred into such account, claims received and settled, profits generated from such account and utilisation of such profits during a financial year and such other information as may be specified.

## ***Audit of financial statements and related matters***

### **1. Listed companies are now required to prepare the quarterly consolidated financial statements as well**

The listed companies are now required to prepare and publish the consolidated financial statements for the first, second and third quarters. These consolidated financial statements are in addition to the quarterly financial statements prepared on standalone basis.

It is, however, clarified that the cumulative figures for the half year, presented in the second quarter consolidated financial statements are not required to be subjected to a limited scope review by the statutory auditors of the company.

### **2. Requirement to have financial statements audited**

CA 2017 had introduced that a private company having paid up capital not exceeding 1 million rupees or such other amount of paid up capital as notified by the Commission was not required to have its financial statements audited. A change has been made whereby this exemption is now not applicable to a private company which is a public interest company or a subsidiary or holding company of a public company.

### **3. Threshold of capital for qualification of auditor**

Audit of financial statements of a company having a paid-up capital of 3 million rupees or more was required to be done by a chartered accountant having valid certificate of practice from the Institute of Chartered Accountants of Pakistan or a firm of chartered accountants. This threshold of paid-up capital has now been increased to more than 10 million rupees.

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## ***Arrangements, reconstruction etc.***

### **1. Power in connection with mediation, arbitration, arrangements and reconstruction vest in the court**

The changes to the CA 2017 have been made whereby power in relation to the following matters now vest in the court:

- Compromise with creditors and members;
- Power to enforce compromises and arrangements; and
- Provisions for facilitating reconstruction and amalgamation of companies.

We understand that these powers were being exercised by the court in view of the SRO dated August 17, 2017 in respect of public interest companies, large sized companies and medium sized companies.

Through this amendment practically the powers in connection with the small sized companies have also been transferred to the court.

## ***Review and revision of orders***

### **1. General right to review orders**

An order passed by a registrar or an officer of the Commission has been subjected to general right of review by the Commission either on application of the aggrieved person or of the registrar within 60 days.

The registrar or commission may also review an order passed by them either of their own motion or on an application within 60 days.

Any order passed by the Federal Government under the CA 2017 shall also be subject to review by the Federal Government either of their own motion or on application made within 60 days.

## **Directors, board and directors' report**

### **1. Commission's powers regarding disqualification order**

Under CA 2017 added certain new grounds for Commission to pass disqualification orders against a person to hold office of a director of a company for a period up to five years. The following grounds have now been deleted:

- 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;
- the person has entered into a plea bargain arrangement with the National Accountability Bureau or any other regulatory body; and
- it is expedient in public interest so to do.

### **2. Protection to independent and non-executive directors**

CA 2017 added provisions for protection to independent and non-executive directors. Under those provisions, an independent or non-executive director were to be held liable only in respect of such acts of omission or commission by a listed company or a public sector company which had occurred with his knowledge, attributable through board processes, and with his consent or connivance or where he had not acted diligently.

These provisions have now been deleted.

### **3. Loan to chief executive or whole-time director**

Loan can now only be provided to the chief executive or a whole-time director, subject to the condition that the loan is granted under a scheme approved by the members of the company. Where the subject company is the listed company, approval of the Commission is also required to be obtained before sanctioning of any such loan. Further, the provision of guarantee or security in connection with a loan to such a director; or to any of his relatives is no longer allowed.

### **4. Personal liability of directors in case of investment in associated companies and undertakings**

Under CA 2017, directors were personally made liable to make payment of return on investment in associated company or undertaking if the same was not recovered by the company. This has now been withdrawn.

### **5. Additional matters to be reported in directors' report**

Directors' report of a public company or a private company which is a subsidiary of a public company is now also to disclose remuneration package of each of the directors and chief executive including but not limited to salary, benefits, bonuses, stock options, pension and other incentives.

Directors' report of a listed company is now also to disclose legitimate reasons for not declaring dividend despite earning profits and future prospects of dividend, if any.

## **Liquidation**

### **1. Publication of appointment in the official gazette done away with**

The requirement on every person appointed as liquidator of a company to get notice of his appointment published in the official gazette has been done away with. Now notice of such appointment is to be published in the newspaper in English and Urdu languages at least in one issue each of a daily newspaper of respective language having nationwide circulation and a clipping thereof to be sent to the registrar immediately thereafter.

### **2. Monies left unclaimed with the liquidator**

Any monies left with the liquidator after winding up of the company were required to be deposited into Investor Education and Awareness Fund. After dissolution of the said fund, Commission is now empowered to prescribe the manner of such disposal.



## ***Provisions regarding foreign companies***

### **1. Application to foreign entities**

Foreign entities to whom CA 2017 is applicable has been enhanced to now include (i) all body corporates incorporated outside Pakistan instead of only the companies, (ii) having place of in Pakistan even through electronic mode, and (iii) conducting any business activity in Pakistan in any manner as may be specified.

### **2. Register of foreign companies to be maintained**

The registrar shall now maintain a register of foreign companies in specified form and manner. Name of a foreign company may be struck off by the registrar from the register and notice thereof published in the official gazette in certain cases, including any the following:

- permission issued by relevant authority is cancelled;
- the company ceases to operate consequent upon revocation of a licence granted by the Commission or by any other licencing authority;
- the company has acted against the interest, sovereignty and integrity of Pakistan, the security of the State and friendly relations with foreign states;
- the company is conceived or has been carrying unlawful or fraudulent activities;
- the company is run and managed by persons who commit fraud, misfeasance or malfeasance in relation to the company; or
- the company is not managed in accordance with its constitutive documents or failed to carry out the directions or decisions of the Commission or the registrar given in the exercise of powers conferred by CA 2017.

## ***Abolishment of certain provisions introduced by CA 2017***

### **1. Companies engaged in real estate projects**

Certain conditions on companies engaged in real estate projects e.g. not to announce projects or receive deposits unless approval in respect of such projects were obtained from the Commission, have now been abolished.

### **2. Registered valuers regime**

Regime of valuers registering with the Commission for performing valuations required under the CA 2017 has been abolished.

However, such valuations under the CA 2017 shall now be required by valuers notified by the Commission.

### **3. Commission's power to require security clearance**

Commission's power to require security clearance of any shareholder, director or other office bearer of a company has been abolished.

### **4. Inactive companies**

CA 2017 had brought a concept of inactive companies whereby a company formed for a future project or to hold an asset or intellectual property and having no significant accounting transaction could obtain status of an inactive company and was then subject to very limited corporate and filing requirements.

This has now been abolished.

## ***Companies' global register of beneficial ownership***

### **1. Threshold specified for reporting shareholding in foreign companies**

CA 2017 introduced a concept of companies' global register of beneficial ownership imposing a requirement on every substantial shareholder and director of a Pakistani company who is a Pakistani citizen to report to the company his shareholding or any other interest in a foreign company to such Pakistani company.

The Pakistani company, after consolidating such reporting by its substantial shareholders and directors, reports the same to the registrar.

A threshold for this reporting has now been specified and now only that shareholding in a foreign company is to be reported which is 10% or more.

Also, an exception in the general right of any person to inspect documents of any company filed with the registrar or taking certified copy of thereof has been created in respect of above reporting by the company.

## ***Measures for greater ease of doing business***

### **1. Start-up companies**

Start-up companies have been defined as companies with less than 10 years since incorporation, having turnover of up to 500 million rupees and working towards the innovation, development or improvement of products or processes or services or having a scalable business model with a high potential of employment generation or wealth creation or for such other purposes as may be specified.

The above age since incorporation and limit of turnover can be modified by the Commission.

### **2. Empowering the Commission**

The Commission has been empowered to implement measures for providing greater ease of doing business, especially for start-up companies defined as above, improving regulatory quality and efficiency and facilitating innovation and the use of technology in conducting business by the corporate sector.

In respect of above, the Commission may take such other measures prior to the issuance of regulations as it may deem fit through guidelines, policy papers, frameworks or any other modes or mechanisms.

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