

New Company Law in Pakistan

Key changes and new concepts –
the Companies Ordinance, 2016

November, 2016



Table of Contents

<i>Foreword</i>	<i>4</i>
<i>Company incorporation.....</i>	<i>5</i>
<i>Use of technology</i>	<i>5</i>
<i>Jurisdiction of court under the Ordinance.....</i>	<i>6</i>
<i>Investigation and powers of the Commission.....</i>	<i>6</i>
<i>Issue of shares</i>	<i>7</i>
<i>Transfer / Transmission of shares</i>	<i>7</i>
<i>Directors and the board</i>	<i>8</i>
<i>Related party transactions</i>	<i>10</i>
<i>Unclaimed shares, dividends etc.</i>	<i>11</i>
<i>Dividends</i>	<i>11</i>
<i>Jurisdiction over schemes of arrangements</i>	<i>12</i>
<i>New concepts</i>	<i>13</i>
<i>Financial statements</i>	<i>15</i>
<i>Audit of financial statements</i>	<i>17</i>
<i>Rehabilitation of sick public sector companies</i>	<i>19</i>
<i>Prevention of oppression and mismanagement</i>	<i>19</i>
<i>Repeal, savings and other matters</i>	<i>19</i>

Foreword

This brief booklet is the first of a series to be released by the firm on the new Companies Ordinance, 2016 (2016 Ordinance). This Ordinance repealed the existing Companies Ordinance, 1984 (1984 Ordinance).

In this part, only a summary of key changes and new concepts of the 2016 Ordinance have been identified. Our comments on implications shall follow.

The companies' law is the primary and mother law for the businesses to be run under the corporate sector. Other laws, including banking laws etc. rely on this primary law with respect to corporate regulations.

1984 Ordinance was introduced to repeal the then operative Companies Act, 1913. There had been substantial developments in the intervening period that required complete revamping of the corporate law in 1984. Same rationale can be applied for the introduction of 2016 Ordinance; however the primary analysis of the 2016 Ordinance reveals that, except for certain sections identified in the following paragraphs, amendments are in general operational and procedural in nature.

The law has been introduced by way of an Ordinance. Under the Constitution of the Islamic Republic of Pakistan, this law will have to be passed both by the Lower and Upper Houses of the Parliament within a stipulated time. It is a preferred option that substantive legislation really affecting all segments of the society are not introduced by way of Ordinances. This process in the present situation will be followed as and when the Ordinance is placed before the respective houses; however, the effect of substantive changes in the intervening period (from promulgation of 2016 Ordinance i.e. November 11, 2016 to the effective date of Act of Parliament), if not approved in the same form by the Parliament, shall have to be deliberated.

The financial developments over the years led to a movement for improvements in Corporate Governance. This is a commendable approach. However, all the steps to be undertaken in this field have to take into account the respective stage of corporate structure in that country and latitude to be provided to the owners of businesses in running their affairs. The balance between the corporate regulation and business decisions, in our view, is directly linked with the level of economic growth in the society. There cannot be any universal principle on this subject. The present statute is rightly emphasising on improvement in the regulations; however, the other side of the picture is also required to be kept in mind as for Pakistan, the wealth and employment creation by the private sector is an essential and indispensable economic requirement. We hope that this aspect will be kept in mind whilst debating the subject in the Parliament.

This document can also be accessed on our website www.pwc.com/pk.

November 17, 2016

Note: Order of presentation does not necessarily depict importance.

Company incorporation

1. Simplified Memorandum and concept of principal line of business

Concept of principal line of business has been introduced, which is defined as the business in which substantial assets of the company are held or from which substantial revenue is earned by a company, whichever is higher.

Companies are allowed to carry on any lawful business or activity by mentioning only the principal line of business in the object clause of their memorandum which shall commensurate with the name of the Company.

In case of memorandum of association of existing companies, object stated at serial number 1 of the object clause is to be considered as the principal line of business of those companies. If the object stated at serial number 1 of the object clause is not the principal line of business of a company, intimation of the same to the registrar is required along with a revised set of memorandum indicating its principal line of business activity at serial number 1 of the object clause within a time period to be specified.

The principal line of business can be changed by altering the memorandum without requiring confirmation by the Commission.

2. Payment of initial subscription money

Initial subscription money in respect of shares subscribed by the sponsors as mentioned in the memorandum is now required to be paid to the company in cash within thirty (30) days of incorporation with confirmation to this effect by the auditor of the company.

3. Negative list regarding name of a company

A negative list has been added regarding the name that a company can be registered with. The Commission has also been empowered to add to the list and having finality of decision in this respect.

4. Clarification of certain concepts

Certain concepts introduced in the corporate law over the period (e.g. single member company etc.) which were introduced through small changes in the provisions existing at that time, have now been enshrined and harmonised with the other provisions of the corporate law.

Similarly, procedural matters in respect of conversions of companies from one form to the other have also been clarified and simplified. For example, requirement of preparing and submitting statement in lieu of prospectus for conversion of a private company to a public company etc. have been done away with.

5. Restriction on layers of holding and subsidiary companies

A concept of layers of companies (holding and subsidiary relationship) has now been introduced and the Commission has been empowered to notify the maximum number of such layers of subsidiaries in respect of a class or classes of holding companies.

Use of technology

1. Enabling provisions

Many enabling provisions have been introduced for the use of technology. Some of these are:

- i- Service of documents / notices to the members, registrar and the Commission through electronic mean
- ii- E-voting and postal balloting
- iii- Enabling provision empowering the Commission to notify mandatory on-line filing. Concept of licensed e-intermediaries where companies do not have requisite IT Infrastructure
- iv- Delivery of notices and documents through electronic mail
- v- Dematerialised form of shares
- vi- Service of notices through email
- vii- In certain cases, the electronic copies of the record to be taken to be valid evidence

Such concepts shall be placed by the companies in their articles of association for application.

Jurisdiction of court under the Ordinance

1. Disposal of cases in prescribed time

The (High) Court having jurisdiction over the matter has now been required to decide the case within a period of one hundred and twenty (120) days from the date of presentation of the case and for this purpose the Court may, if it is in the interest of justice, conduct the proceedings on a day to day basis and if the Court deems fit, it may impose costs which may extend to Rupees one hundred thousand per day or such higher amount as the Court may determine against any party to the proceeding causing the delay.

2. Concept of ‘Registrar of Company Bench’

The concept of registrar of company bench has been introduced to perform functions assigned to it under this Ordinance including all ministerial and administrative business of the company bench.

The registrar has also been empowered, if referred by the Court, for recording of cross examination of the deponent.

The Registrar of the Company Bench shall have all the powers of the Civil Court under the Code of Civil Procedure, 1908 for the purposes of execution of service and summoning of deponents and conducting cross examination in accordance with the directions of the Court.

3. Personal appearance only in exceptional circumstances

The Court is to treat affidavits, counter affidavits and other documents filed by the parties to the proceedings as evidence and decide the matter on the basis of the documents and affidavits placed before the Court, in a summary manner and pass final orders within the time stipulated.

In exceptional circumstances where the Court is of the view that any issue of facts requires cross examination, the Court may order attendance of the relevant deponent or deponents for the purposes of cross examination by such opposing party or parties.

4. Qanun-e-Shahadat and Code of Civil Procedure not to apply

The provisions of the Qanun-e-Shahadat (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.

Investigation and powers of the Commission

1. Empowerment of the Commission

With respect to the seizure of documents by the registrar, the power of magistrate or court for such authorisation has been given to the Commission. In addition, the scope of the items to be seized has been extended.

2. Serious Fraud’s Investigation

Concept of Serious Fraud’s Investigation has been introduced. A Serious Fraud is to be one as specified in the Sixth Schedule (False statement, falsification, forgery, fraud and deception).

In cases of Serious Fraud where there is a matter of public importance or it is in the interest of public at large, the Commission has been empowered to request the concerned Minister in Charge to form a Joint Investigation Team (JIT).

Issue of shares

1. Earmarking from further issue of capital for Employee Stock Option Scheme

Enabling provisions have been created to earmark percentage of further issue of a public company for its employees under 'Employees Stock Option Scheme'. The Commission has been empowered to prescribe its procedure and terms and conditions.

The employee stock option schemes has been defined and now shares of the holding company or the subsidiary companies have been made eligible to form part of the Employee Stock Option Scheme.

2. Government's power to convert its loan to a public sector company into shares

In case of public sector companies who have obtained loan from a Government, the Government has been given overriding power, where it considers it necessary in the public interest so to do, to direct that such loan or any part thereof be converted into shares in that company, on such terms and conditions as appear to the Government to be just and reasonable in the circumstances of the case, even if the terms of such loan do not include the option for such conversion. In such circumstances, the other provisions of further issue shall not apply.

A public sector company has been defined to mean a company which is directly or indirectly controlled, beneficially owned or not less than fifty-one percent (51%) 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.

3. Issue of share at discount

Approval of Commission for issue of shares at discount in case of listed companies where discount is upto 10% of face value and 90 days' closing volume weighted price remained below the proposed issue price has been done away with.

4. Application to court against issuance of shares for inadequate consideration

An enabling provision has been made for a director, creditor or member of a company to apply to the Court for a declaration that shares of the company have been allotted for inadequate consideration.

Transfer / Transmission of shares

1. Right of first refusal in case of private companies

In case of private companies, mandatory requirement on the seller of shares has been introduced to first offer these to the existing members in proportion of their shareholding through the board of directors of the company. The pricing of the offer shall be subject to the rules to be formulated by the commission in this respect.

The seller shall only be able to sell to a third person if, and to the extent, the existing members do not exercise their right of first refusal.

2. Nominee (at death of a member) to be trustee for the legal heirs

In the past, a member could nominate a person in whose name shares were to be transferred on the death of the member.

It has now been required that such nominee in whose name shares shall be transferred at death of the member shall be trustee of these shares as to facilitate the transfer of shares to the legal heirs of the deceased in accordance with the applicable personal law.

Also, if the deceased was a director of the company (in case of unlisted companies), the nominee acquiring the shares as trustee shall act as director of the company to protect the interest of the legal heirs.

3. Approval of transfer of shares by licensed agents

The Commission has been empowered to notify the companies in which, before making any application for registration of the transfer of shares to the board, the transferor and the transferee shall appear before the agent licenced by the Commission.

Directors and the board

1. Appointment and removal

- Certain conditions previously brought through the Code of Corporate Governance (CCG) have been enshrined in the Ordinance.
- Instead of 20%, members representing at least 10% of voting power are now entitled to apply to the Court for declaring elections of directors invalid.
- The 1984 Ordinance provided a substantial acquirer in a 'listed' company to apply to the Commission to hold fresh elections of directors. This facility appears to have been taken away in the 2016 Ordinance and is now available only in case of non-listed company to a member with requisite holding to be elected a director.
- The commission has been given right to remove a director of a public interest company by disqualifying him for upto a period of 5 years in cases of fraudulent activities, insider trading and other specified offences and such directors shall be personally liable for all debts and other liabilities of the company as are incurred at a time when that person was involved in the management of the company or was acting on instructions given by him respectively.

2. Manner of selection of independent directors

It is made mandatory that an independent director under any law, rules, regulations or code shall be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, maintained by any institute, body or association, as may be notified by the Commission, having expertise in creation and maintenance of such data bank and post on their website for the use by the company making the appointment of such directors.

3. Action against independent and non-executive directors

It has now been provided that action against independent and non-executive directors can only be taken 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.

For this, non-executive director has been defined to mean 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

4. Relaxation of conditions for loan to Directors

The restriction on giving loan by a public company (or a subsidiary of a public company) to:

- any firm in which any such director or a relative of a director is a partner,
- any private company of which any such director is a director or member,
- any body corporate at a general meeting of which not less than twenty five per cent of the total voting power may be exercised or controlled by any such director or his relative, or by two or more such directors together or by their relatives, and
- any body corporate, the directors or chief executive whereof are or is accustomed to act in accordance with the directions or instructions of the chief executive, or of any director or directors, of the lending company

has been done away with.

Loan to, or a guarantee or security in respect of, a director of the company or of its holding company or any of his relatives can now also be provided by public companies (other than listed) with a resolution of the members of the company, and in case of listed companies with a resolution of the members of the company and sanction of the Commission.

5. Proceedings at directors' meetings

- Assignment of office of directorship previously allowed under authority of a special resolution has been prohibited.
- Time for providing minutes of a meeting to directors has been reduced from 14 days to 7 days and the minutes are now to be maintained for a period of twenty (20) years in physical form and permanently in electronic form.
- Concept of resolution by circularisation has been made part of the Ordinance. Such resolution will be considered valid if signed by all directors or the committee of directors.
- Restriction on the board to sell an Undertaking or a Sizeable Part thereof only under the authority of a general meeting in case of public companies or subsidiaries of public companies has been extended to all companies. Another addition to such restriction is sale or disposal of a subsidiary. However, the general meeting can authorise the board in this respect, and the resolution passed has been given an execution time of one (1) year.

Also, terms 'Undertaking' and 'Sizeable part' in terms of restricting board's power of disposal of assets have been defined.

'Undertaking' is to mean one in which the investment of the company exceeds twenty percent (20%) of its net worth as per the audited financial statements of the preceding financial year or one which generated twenty percent (20%) of the total income of the company during the previous financial year.

'Sizeable' in any financial year is to mean twenty five percent (25%) or more of the value of the assets in that class as per the audited financial statements of the preceding financial year.

6. Addition to the duties of directors

Some expressive additions have been made in the duties of the directors being:

- To act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees the shareholders the community and for the protection of environment.
- To discharge his duties with due and reasonable care, skill and diligence and to exercise independent judgment.
- Not to 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.

Related party transactions

1. Manner of conducting related party transactions

All transactions by a company with a related party (other than in the ordinary course of business) in respect of the following, are to be in line with a policy approved by the board, and conditions to be specified by the Commission:

- 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.

In case of the majority of directors to be interested in the transaction, the matter is to be placed before the general meeting for approval as special resolution.

Related party has been defined to include:

- 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;
- any body corporate whose board chief executive or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- any person on whose advice, directions or instructions a director or manager is accustomed to act;
- any holding, subsidiary or associated company; and
- such other person as may be specified by the Commission.

(Relative for this purpose means spouse, siblings and lineal ascendants and descendants of a person).

Office of profit has been defined to mean any office:

- i- 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
- ii- where such office is 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



Unclaimed shares, dividends etc.

1. Unclaimed shares, modarba certificates and dividend to vest with Federal Government

An overriding provision has been introduced whereby where shares of a company or modaraba certificates of a modaraba have been issued, or where dividend has been declared by a company or modaraba which remain unclaimed or unpaid for a period of three years from the date it is due and payable, or where any other instrument or amount which remain unclaimed or unpaid, having such nature and for such period as may be specified by the Commission; this has to be deposited, after following a process of two (2) notices, to the credit of Federal Government and deposited with the State Bank of Pakistan or National Bank of Pakistan in an account to be called 'Companies Unclaimed Instruments and Dividend and Insurance Benefits and Investors Education Account' (which shall be deemed to be part of public accounts) where it is in the form of monetary amount, and with the Commission where it is in the form of shares or modarba certificate .

The Commission shall sell these shares or modarba certificates and deposit the money to the above named account.

There is procedure described for claiming such principal amount by the claimant from the Commission.

Companies are required to preserve and continue to preserve all original record pertaining to the deposited unclaimed or unpaid amount and the shares or modaraba certificates or other instrument and provide copies of the relevant record to the Commission until it is informed by the Commission in writing that they need not to be preserved any longer.

2. Establishment of Investor Education and Awareness Fund

A fund with the name of 'Establishment of Investor Education and Awareness Fund' has been created for objects as described in the name.

Some of the moneys credited to this account shall be the earnings from the Companies Unclaimed Instruments and Dividend and Insurance Benefits, as mentioned in (1) and the left over funds at winding up of a company licensed to act with non-for-profit objects, which are not given to another company having similar objects.

Dividends

1. Dividend in specie

A specific mention as to dividend in kind has been added as a mode of payment of dividend.

However, an explanation to the same has been provided that restricts such dividend in kind only to be in the form of shares of a listed company.



Jurisdiction over schemes of arrangements

1. Power of court given to the Commission

All the powers and jurisdiction over compromises, arrangements and reconstruction, including over the schemes of arrangements, has been taken over from the respective Honourable High Courts and given to the Commission.

It has been an established principle that this jurisdiction was exercised by the Courts as a separate jurisdiction where other matters of corporate law did not apply.

Also, the jurisdiction of court in this respect also interacted with its jurisdictions under other laws over which the Commission does not have jurisdiction.

In comparative legal frameworks, this jurisdiction is exercised by judicial courts / tribunals which are totally independent of the regulator.

Further, invariably schemes of arrangements require reduction of share capital where over which the jurisdiction still rests with the court.

2. Boards of directors empowered for amalgamation in certain cases

Board of directors have been given the jurisdiction for amalgamation of following without any regulatory / court approval:

- Wholly owned subsidiaries of a holding company
- wholly owned subsidiary(ies) into its holding company



New concepts

1. Registered valuers

A regime has been brought in whereunder any valuation required to be done under the Ordinance shall be required to be done by a registered valuer.

Commission has been empowered to specify the registration criteria including qualification, experience and the terms and conditions.

2. Inactive companies

A company, other than a listed company, that (i) has been formed for a future project or to hold an asset or intellectual property and that has no significant accounting transaction, or (ii) has not been carrying on any business or operation, or that has not made any significant accounting transaction during the last two financial years; can now make an application to the registrar for obtaining the status of an 'inactive company'.

An inactive company shall be required to have lesser filings and procedural requirements, to be prescribed by the Commission.

3. Easy exit of defunct companies

The easy exit procedures, under easy exit schemes earlier, have now been incorporated in the law.

4. Certificate of Shariah Compliance by the Commission

Commission has been empowered to certify a company or a security to be 'Shariah Compliant' conducting its business or using proceeds of the security according to the principles of Shariah and for Shariah permissible business.

Unless a certificate in this respect is obtained, no company or security shall be called 'Shariah Compliant'.

Significant new and specific disclosures have been introduced for Shariah Compliant Companies listed on Islamic index under the new 4th Schedule.

5. Free Zone Company

A company incorporated for the purpose of carrying on business in the export processing zone or an area notified as Free Zone shall be eligible to such exemptions from the requirements of this Ordinance as maybe notified.

The disclosure of information maintained by the registrar regarding promoters, shareholders and directors of the Free Zone Company who are foreign nationals shall be restricted by the Commission for the protection of foreign investors and to secure foreign investment.

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

6. Acceptance of advances by real estate company

A company shall not engage in the business of real estate project unless its principal line of business is development of real estate projects. It cannot undertake projects until it has obtained requisite no objection certificates from relevant authorities to the satisfaction of the Commission. The money received shall be kept in an escrow to be used for the specific project, not to be used by the general creditors of the company.

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.

7. Agriculture promotion companies

A concept of establishing Agriculture Promotion Company by a person, 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, has been introduced. Such company shall be formed in the manner and subject to terms and conditions as maybe specified.

Such a company shall deal primarily with the produce of its members.

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.

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

A duty has been imposed on every officer of a company to endeavour to prevent the commission of any fraud, offences of money laundering including predicated offences as provided in the Anti-Money Laundering Act, 2010 with respect to affairs of the company and shall take adequate measures for the purpose.

A person failing to comply with this duty shall be liable to punishment of imprisonment for a term which may extend to three years and with fine which may extend to one hundred million rupees unless such officer has taken all reasonable measures available under the applicable laws within his capacity to prevent commission of such offence.

9. Security clearance of shareholders and directors

The Commission has been empowered to require the security clearance of any shareholder or director or other office bearer of a company from any local and foreign agency in such manner as may be deemed appropriate.

The consequences of failing such a clearance, however, are not provided.

10. Offences to be cognisable only by the Commission

All offenses in which punishment of imprisonment is provided under this Ordinance (except few as detailed in the 8th schedule) have been made cognizable by the Commission only, to be proceeded in accordance with section 38 of the Securities and Exchange Commission of Pakistan Act, 1997 and this Ordinance; and nothing contained in the Code of Criminal Procedure, 1898 or any other law shall apply in this case.

11. Companies' Global Register of Beneficial Ownership

Every substantial shareholder or officer of a company, having ten percent (10%) or more shares in a foreign company or body corporate has been required to report to the company regarding his beneficial ownership or any other percentage or interest as may be notified by the Commission.

The company has been required to submit all the aforesaid information received by it during the year to the registrar along with the annual return.

The above information is required to be reported to the registrar through a special return on a specified form within sixty (60) days from the commencement of this Ordinance.

The Commission shall keep record of the information in a Companies' Global Register of Beneficial Ownership.

Substantial shareholder has been defined to mean a person who has an interest in shares of a company:

- the nominal value of which is equal to or more than ten per cent of the issued share capital of the company; or
- which enables the person to exercise or control the exercise of ten per cent or more of the voting power at a general meeting of the company.

Beneficial ownership of shareholders or officer of a company has been defined to mean ownership of securities beneficially owned, held or controlled by any officer or substantial shareholder directly or indirectly, either by:

- him or her;
- the wife or husband of an officer of a company, not being herself or himself an officer of the company;
- 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;
- 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.

Financial Statements

1. Preparation of financial statements

Under the 2016 Ordinance the first financial statements are required to be laid before the company in the annual general meeting within 16 months of incorporation as against 18 months in the 1984 Ordinance.

All the requirements with regard to the financial statements applicable to companies have been exempted for a single member company. These principally relates to laying the financial statements before the annual general meeting and audit of financial statements.

A new third schedule to the Companies Ordinance, 2016 has been added that provides for classification of companies and the applicable financial reporting framework for the respective types of companies.

For the purpose of preparation of financial statements and related accounting treatment of associated companies shall be in accordance with financial reporting standards or such other standards as may be notified by the Commission.

Notwithstanding anything in this Ordinance any company that intends to make unreserved compliance of IFRS issued by the IASB shall be permitted to do so.

The requirement to prepare consolidated financial statements for holding companies has been retained however for a private company and its subsidiary, where none of the holding and subsidiary company has the paid up capital not exceeding one million Rupees the consolidated financial statements are not required.

The provision in 1984 Companies Ordinance that all interim financial statements of a subsidiary prepared for consolidation purposes where there is different financial year ends of holding and subsidiary companies to be reviewed by the auditors of that subsidiary has been deleted.

For listed companies chief financial officer of the company is also required to sign the financial statements in addition to the chief executive officer and one director.

2. Financial reporting framework

The third schedule to the 2016 Ordinance provides details of classification of companies and the respective financial reporting standards applicable to them. It also specifies which companies are required to follow requirements of fourth and fifth schedule to the 2016 Ordinance. The requirements are largely in line with 1984 Ordinance however in certain respect the new requirements are different. Also new criteria for determination of classification of companies have been added.

Under the fourth and fifth schedules to the 1984 Ordinance for components of financial statements detailed sub heads for classification were also prescribed. In the new schedules a few minimum mandatory heads of items are prescribed and require details mainly relating to associates, related parties and interests in foreign companies. Therefore now the requirements of the respective financial reporting frameworks are applicable with additional disclosures. The significant aspects and changes include financial statements to provide information relating to:

- Geographical location and address of all business units including Mills/plant;
- Particulars of company's immovable fixed assets, including location and area of land;
- Various details about associated companies or related parties or undertakings and transactions.
- Summary of significant transactions and events that have affected the company's financial position and performance during the year;
- Shareholder agreements for voting rights, board selection, rights of first refusal, and block voting shall be disclosed;
- Forced sale value shall be disclosed separately in case of revaluation of Property, Plant and Equipment or investment property;
- In case of any loans or advances obtained / provided, at terms other than arm's length basis, reasons thereof shall be disclosed;
- Certain additional disclosures with regard to security deposits
- For matters of contingencies, 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 proceedings and the relief sought;

- 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 3 years;

The overriding provisions relating to accounting treatment in relation to surplus on revaluation of fixed assets is changed that is to be part of equity which was previously required to be presented below equity. The new fourth and fifth schedules require disclosure of the surplus as separate line item on the face of the financial statements.

The definition of subsidiary company has been made closer to IFRS by bringing the provision relating to control of the company rather than prescribing the percentage holding given previously. However there still remain differences with the definition given in the IFRS.

3. Filing with the Commission and penalties

The requirement to file financial statements with the Registrar for private companies having paid up capital up to Rupees 7.5 million has been increased to Rupees 10 million. A new section has been added that correspond to the exemption from audit requirement for private companies having the paid up capital not exceeding 1 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 30 days form the holding of such meeting.

4. Directors' and chairman reports

The requirement to prepare director's report for a private company having the paid up capital not exceeding Rupees 3 million has been done away with.

For all companies where directors report is required it is to include a fair review of its business. Further for a public company or a private company which is a subsidiary of a public company the directors' report must also state certain additional details that among other matters to cover description of the principal risks and uncertainties facing the company and adequacy of internal financial controls. There are some more requirements for listed companies in the new Ordinance.

The requirement of attaching the relevant information as well as the nature of director's

interest with the directors' report has been deleted as required previously under section 218 of the 1984 Ordinance.

In the case of a listed company an additional requirement of chairman's review report is included in the 2016 Ordinance.

5. Statement of Compliance

The new Ordinance has included an enabling provision that empowers the Commission to direct by general or special order such class or classes of companies to prepare a statement of compliance. The board of directors shall make out and attach to the financial statements such statement of compliance as may be specified. The contents of the statement of compliance have not yet been prescribed. The statement of compliance shall be subject to review of the auditor of the company.

Audit of financial statements

Under the repealed Companies Ordinance, 1984 all companies were required to have the financial statements of the company audited. In the 2016 Ordinance private company having paid up capital not exceeding one million rupees or such other amount of paid up capital as may be notified by the Commission have been exempted from the audit.

1. Qualification of auditor

The audit of financial statements of a public company or a private company which is a subsidiary of a public company and other companies having paid up capital of Rupees 3 million and above was required to be carried out by a chartered accountant or a firm of chartered accountants. That effectively meant that for private companies (other than subsidiary of public company) having paid up capital less than Rupees 3 million any person was allowed to be appointed as auditor. Further only a firm whereof all the partners practicing in Pakistan are chartered accountants may be appointed by its firm name as auditors of a company.

The new Companies Ordinance, 2016 has, however, for companies having paid up capital of less than Rupees 3 million restricted the qualification of auditor to either be a chartered accountant or a cost & management accountant or the firms of chartered accountants or cost & management accountants. In case of appointment by firm name the requirement to have all the partners with above mentioned qualifications have been relaxed by stating that a firm whereof majority of practicing partners are qualified for appointment can be appointed as auditor.

2. Disqualification of auditor

The repealed Companies Ordinance, 1984 contained specific disqualifications of auditor of a company. The new Ordinance has added some more situations of disqualification. Also with regard to disqualifications a new phrase 'other than in the ordinary course of business of such entities' has been introduced for the following situations:

- a person who is indebted to the company;

- a person who has given guarantee or provided any security in connection with the indebtedness of any third person to the company;
- a person or a firm who, whether directly or indirectly, has business relationship with the company;

In case of a person indebted to the company other than in the ordinary course of business the new Ordinance however prescribed amount limits for credit card dues not exceeding Rs 1 million (this was previously Rs 500,000) and for utility company in the form of unpaid dues for a period not exceeding 90 days (no change from the previous position).

The new disqualifications include the following:

- 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 person 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 & Management Accountants of Pakistan.

3. Appointment and fee of auditors

Appointment

The period within which first auditor of a company is appointed by the board of directors is increased from 60 days to 3 months of the date of incorporation.

Subsequent auditor appointment is to be made on the basis of recommendation of the board of directors. However a new provision is introduced that provides a minimum threshold for a member or members holding not less than 10 percent of shareholding of the company is entitled to propose any auditor whose consent has been obtained by him and a notice in this regard has been given to the company not less than 7 days before the date of the annual general meeting. The company is forthwith required to send a copy of such notice to the retiring auditor and shall also be posted on its website. The notice period was previously 14 days and there was no requirement to post this on the website of the company.

The company's auditor is now required to submit a copy of the consent letter to act as auditor of the company given to the company within 14 days to the registrar. Previously this was required for the company to submit the consent.

Fee

The remuneration of auditor of a company has been stated to be fixed by the:

- a. company in the general meeting;
- b. board or the Commission if the auditors are appointed by board or the Commission as the case may be.

Under the Companies Ordinance, 1984 the general meeting could also fix the remuneration of the auditor of a company in such manner as the general meeting may determine. This is not provided in the new Ordinance.

4. Auditors' right to information

A new section specifically detailing the auditors' right to the information has been added in the new Ordinance. Under the repealed Companies Ordinance, 1984 this was covered as powers of auditors however now it is in more detail.

Significant penalty of level 3 on the standard scale has also been prescribed for non-complying with the requirements by any officer of a company that also includes providing false or incorrect information to the auditor.

5. Duties of auditor

The 2016 Ordinance has specifically included the provision in relation to auditor report to be in compliance with the requirements of International Standards on Auditing (ISAs) as adopted by the Institute of Chartered Accountant of Pakistan.

Further for additional matters in the auditor report certain modifications have been made and now the audit is required to include opinion in respect of whether investments made, expenditure incurred and guarantees extended, during the year, were for the purpose of company's business. Previously this was only to the extent of expenditure.

The requirement to include opinion in respect of whether the business conducted, investments made and expenditure incurred during the year were in accordance with the objects of the company have been deleted.

6. Signature of auditor's report

Under the repealed Companies Ordinance, 1984 in case of a firm appointed as auditor of the company any partner of the firm can sign the auditor report that can be signed in the name of the firm. However the new Ordinance states that where the auditor is a firm, 'the report must be signed by the partnership firm with the name of the engagement partner'.

Rehabilitation of sick public sector companies

The provisions contained in the Repealed Companies Ordinance, 1984 relating to the rehabilitation of companies owing sick industrial units have been made applicable to only public sector companies. Accordingly the scope of rehabilitation related provisions has been limited to such companies only.

Prevention of oppression and mismanagement

Under the repealed Companies Ordinance, 1984 if any member or members holding not less than twenty per cent of the issued share capital of a company, or a creditor or creditors having interest equivalent in amount to not less than twenty per cent of the paid up capital of the company, complains, or complain, or the registrar is of the opinion, that the affairs of the company are being conducted, or are likely to be conducted, in an unlawful or fraudulent manner, or in a manner not provided for in its memorandum, or in a manner oppressive to the members or any of the members or the creditors or any of the creditors or are being conducted in a manner prejudicial to the public interest, such member or members or, the creditor or creditors, as the case may be, the registrar may make an application to the Court by petition for an order.

The new Ordinance has decreased the prescribe threshold of member or members holding and creditor or creditors interest from not less than 20 percent to not less than 10 percent of the issued share capital and paid up capital respectively.

Further with regard to management by administration, the repealed Companies Ordinance, 1984 provided right to creditor or creditors of the company having interest of equivalent in amount to not less than 60 percent of the paid up capital of a company to represent to the Commission under the prescribed circumstances to appoint an Administrator to manage the affairs of the company. The said right to represent to the Commission is now also given to the shareholders of the company with the same threshold as for the creditors.

Repeal, savings and other matters

1. Repeal of 1984 Ordinance

The 1984 Ordinance has been repealed except Part VIIIA thereof consisting of sections 282A to 282N 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.

All rules, regulations, notification, guideline, circular, directive, order (special or general) or exemption issued, made or granted under the 1984 Ordinance shall have effect as if they had been issued, made or granted under the corresponding provision of 2016 Ordinance unless repealed, amended or substituted under this Ordinance.

2. Validation of laws

A separate section in respect of validation of laws has been added stating that the amendments made to the 1984 Ordinance or any administered legislation through various Finance Acts shall be deemed to have been validly made from the date of commencement of such Acts.

Notes

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