

**Amendments and Key Changes in the Companies Act, 2017
through Companies (Amendment) Ordinance, 2020 &
Companies (Second Amendment) Ordinance 2020**



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This article describes a summary of the key changes made in the Companies Act, 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).

The government promulgated Companies (Amendments) Ordinance 2020 that altered over 121 provisions of Companies Act 2017 apparently to provide ease of doing business, promote startups and facilitate access to finance to small and medium enterprises, with an aim to meet World Bank's Ease of Doing Business indicators. Some of the amendments that have been reversed through promulgation of Companies (Second Amendment) Ordinance 2020. These include section 172 (m), section 181, section 186 and 187, sections 279 to 282, section 452 and amendment made in section 461 of the Companies Act.

It is pertinent to mention here that 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Ordinance shall be laid before both Houses of the Parliament and if not enacted with or without amendments, shall stand repealed at the expiration of 120 days from its promulgation or, if before the expiration of that period a resolution disapproving it is passed by either House, upon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.

1. Special Resolution (Section 2 (66))

For Special resolution twenty-one days' notice specifying the intention to propose the resolution as a special resolution is required under the law. However, if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has

been given. An amendment has been made whereby listed companies now requires written approval from Securities and Exchange Commission of Pakistan (SECP) for a resolution to be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.

2. Startup Company (Section 2(67A))

A new Clause 67A has been added to Section 2 of the Act which defines a "Start up Company" as under:

"Startup Company" means a company that: -

- (a). is in existence for not more than ten years from the date of its incorporation or such other period or periods as may be specified; and
- (b). has a turnover for any of the financial years since incorporation that is not greater than five hundred million rupees or such other amount or amounts as may be specified; and
- (c). is working towards the innovation, development or improvement of products or processes or services or is a scalable business model with a high potential of employment generation or wealth creation or for such other purposes as may be specified; or
- (d). such other companies or classes of companies as may be notified by the Commission:

Provided that a company formed by the splitting up or reconstruction of an existing company shall not be considered as a startup company;

3. Subscription Money Payable (Section 17)

Subsection 2 of section 17 required that all moneys payable by a subscriber in pursuance of his undertaking in the memorandum of association against the shares be payable in cash within thirty days from the date of incorporation of the company. This requirement has been done away with and now such amount would be payable in such time, manner and condition as may be notified by the Commission.

Further, Sub section 3 of Section 17 has been deleted which required that receipt of subscription money from the subscribers is to be reported by the company to the registrar on a specified form within forty-five days from the date of incorporation of the company and should be accompanied by a certificate by a practicing chartered accountant or a cost and management accountant verifying receipt of the money so subscribed.

4. Common Seal (Section 23)

Section 23 which requires every company to have a Company's Common Seal has been deleted.

5. Alteration of Articles (Section 38)

Number of days to submit altered copy of articles of association of the company, with the registrar have been reduced from 30 days to 15 days from the date of passing of the resolution.

6. Effect of Revocation of Licence (Section 43)

Section 43 states that on revocation of licence of a company under section 42 all the assets of the company after satisfaction of all debts and liabilities shall be transferred to another company licenced under section 42, preferably having similar or identical objects to those of the company.

This Clause has been amended slightly and now assets can be so transferred to ant other not for profit entity registered under any law for the time being in force.

7. Conversion of Status of Unlimited Company as Limited Company and vice-versa (Section 48)

If a company's status has been converted and approved by the Commission by an order in writing, a copy of memorandum and articles of association as altered is required to be submitted with the registrar within 15 days from the date of such order.

8. Return as to Allotment (Section 70)

The number of days to file return of the allotment of shares with registrar are reduced from 45 days to 30 days from the date of allotment.

Further, the requirement for Auditor Certificate / Report has been withdrawn. Now a declaration from Chief Executive that the amount of consideration has been received in full by the company and shares have been issued to each allottee will be submitted to Registrar with Return of allotment.

9. Restriction on Transfer of Shares by the Members of a Private Company (Section 76)

A proviso to sub section 5 has been added requiring a member of a private company selling his shares to any other person to ensure that as a result of such sale, the limit of maximum number of members for a private company is not be exceeded.

Further, Commission's powers to specify the mechanism to determine the price of shares has been withdrawn by omitting sub section 6.

10. Transfer to Nominee of a Deceased Member (Section 79)

Sub section 3 of section 79 restricts that a member of the company can only nominate his relatives, namely, a spouse, father, mother, brother, sister and son or daughter.

A proviso has been added to relax such restriction in case of absence of any of the relatives.

Such shareholder is entitled to nominate any other person.

11. Further Issue of Capital (Section 83)

Existing provisions of Section 83 were silent about further issue of share capital in case of private limited companies in case of issuance other than right.

A new Clause "C" has been added to Section 83(1) for private companies' requirements for further issue of share capital in case of issuance other than right. It states that a private company, if its articles authorizes, by passing a special resolution may offer further issue of shares to any person for cash or in-kind consideration. The Commission is authorized to notify conditions and other requirements in this regard

12. Employee Stock Option Scheme (Section 83A)

New section 83A has been added for Employee Stock Option Scheme for clarity purposes and with a wider scope. Previously this was included as a proviso to Section 83(1a(iv)) of the Act and was restricted to public companies only.

Now every company may, under the authority of special resolution, issue shares in accordance with its articles under employees' stock option in accordance with such procedure and subject to such conditions as may be specified.

13. Purchase by Company of its Own Shares (Section 86 & 88)

Existing provisions of Companies Act only allow a listed company to purchase its own shares. Now this prohibition for purchase of its shares for non-listed companies has been withdrawn by amending Section 86 and 88. Now all companies can purchase their own shares after compliance with the requirements of Section 88 and regulation specified in this regard.

Further, Sub section 2 of Section 88 provides that shares purchased by the company may either be cancelled or held as treasury shares. A proviso has been added to sub section 2 limiting the said option for unlisted public company and private company to only cancellation of such shares and reduction of shares capital accordingly. Cancellation of shares under this section shall not be deemed to be a reduction of share capital within the meaning of section 89

14. Annual Return (Section 130)

The companies were not required to file annual return in case there is no change of particulars in the last annual return filed with the registrar. This relaxation has been withdrawn now and now every company is required to file annual return every year.

15. Annual General Meeting (Section 132)

Condition for listed companies to hold AGM in nearest city of registered office is omitted. Now listed companies can only hold AGM in town in which registered office is situated or on any other place with permission of the Commission

16. Extra Ordinary General Meeting (Section 133)

21 days' notice of meeting as in case of AGM is also required for any extra ordinary general meeting of shareholders of a listed company. An amendment has been made whereby in case of an emergency affecting the business of a listed company, on an application made by the company the Commission can authorize such meeting at a shorter notice.

17. Notice of Resolution (Section 140)

Voting power in the company to give notice of a resolution which they propose to be considered at the meeting has been reduced from 10% to 5%.

18. Ineligibility of certain persons to become director (Section 153)

Holding a National Tax Number as per the provisions of Income Tax Ordinance, 2001 is one of requirement for a person to become eligible to become director of a company. It has been provided now that this condition is not applicable for foreign national who is not required to hold National Tax Number under the provisions of the Income Tax Ordinance, 2001.

19. Term of office of Directors (Section 161)

The term of office of director as provided in section 161 is three years. Proviso to sub section 1 which stated that term of office of directors of a company limited by guarantee and not having share capital may be a period of less than three years as provided in the articles of association of a company has been deleted and a new proviso added which states that the term of office of directors of a trade organization may be a period of less than three years as provided in the Trade Organizations Act, 2013 (II of 2013).

20. Consent to act as Director (Section 167)

The consent given by an individual to be appointed or nominated as director or chief executive of the company was required to be filed with the registrar within fifteen days. The condition has been omitted not and now such consent given to the company is required to be annexed to the relevant form reporting the appointment of director or the chief executive.

21. Disqualification of Directors by the Commission (Section 172)

Section 172(1) states various circumstances under which, the Commission may pass disqualification order against a person to hold the office of a director of a company for a period up to five years beginning from the date of order. Following circumstances have been deleted from the list.

- f. 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;
- m. the person has entered into a plea bargain arrangement with the National Accountability Bureau or any other regulatory body;

The section 172(m) that related to disqualification of a person to hold the office of a director of a company is restored in Companies Act. This section was deleted from the act through Companies Amendment Ordinance 2020. Section 172(m) was included in the Companies Act in 2017 to enable the Commission to pass disqualification order for maximum period of up to 5 years against the person from holding office of director in a company who has entered into plea bargain arrangement with NAB. It has been reversed through Companies (Second Amendment) Ordinance 2020.

- o. that it is expedient in the public interest so to do;

22. Passing of resolution by the directors through circulation (Section 179)

Condition of circular resolution to be signed by all directors has been omitted. Written approval of all the directors shall be valid and effectual.

23. Protection to independent and non-executive directors (Section 181)

In order to make directors of listed company or a public sector company act more responsibly and vigilantly, Section 181 which related to protection to independent directors and non-executive directors has been omitted.

The Section 181 that related to protection to independent and non-executive directors was also restored through the Second Amendment Ordinance. This Section was introduced in 2017 to protect independent and non-executive directors from acts, omissions and commission which occurred without their knowledge or consent. SECP had recommended to remove this section on the grounds that all the directors making decision should be treated equally. It has been reversed through Companies (Second Amendment) Ordinance 2020.

24. Loans to Directors (Section 182)

Section 182 prohibits loans to director of a company, of its holding company, or to any of his relatives. A new proviso has been added which states that this prohibition shall not apply to the loan provided to the chief executive or the whole-time director subject to the condition that the loan is granted under a scheme approved by the members of the company.

25. Power of Board (Section 183)

Section 183(3) has been amended whereby special resolution has been made mandatory before board of a company do any of the following:

- (a) sell, lease or otherwise dispose of the undertakings or a sizeable part thereof unless the main business of the company comprises of such selling or leasing; and
- (b) sell or otherwise dispose of the subsidiary of the company;
- (c) remit, give any relief or give extension of time for the repayment of any debt outstanding against any person specified in sub-section (1) of section 182.

25. Appointment of Chief Executive (Section 186 & 187)

An important change has been made whereby Federal Government power to appoint Chief Executive of public sector company has been withdrawn. The chief executive of public sector company shall be appointed by Board of directors of such company.

The amendment in Section 186 of the act had reduced the powers of the federal government to appoint first chief executive officer of a public sector company was also reverted back. It has been reversed through Companies (Second Amendment) Ordinance2020

26. Financial Statements (Section 223)

Private company having the paid-up capital not exceeding one million rupees are not required to have financial statement audited from the auditor. An exception has been made whereby it has been stated that this relaxation shall not be applicable on private company which is a public interest company or a subsidiary or holding company of a public company.

27. Contents of Directors' Report (Section 227)

In case of public company or a private company which is a subsidiary of a public company, Director's Report now require disclosure with respect to remuneration package of each of the directors and chief executive including but not limited to salary, benefits, bonuses, stock options, pension and other incentives.

Further, in case of listed company it has been made mandatory that business review section of the directors' report must include the legitimate reasons for not declaring dividend despite earning profits and future prospects of dividend, if any.

29. Approval and authentication of Financial Statements (Section 232)

Requirement for private company having a paid up capital not exceeding one million rupees that the financial statement shall be accompanied with an affidavit executed by the chief executive if the accounts are signed by him or by any of the directors if the accounts has been signed by two directors that the financial statements have been approved by the board has been deleted.

30. Copy of Financial Statements to be forwarded to the Registrar (Section 233)

Private company having the paid up capital not exceeding ten million rupees is not required to file financial statements together with reports and documents with the registrar. It has been now clarified that this relaxation shall not apply to public interest company or a subsidiary or a holding company of a public company.

31. Filing of unaudited Financial Statements (Section 23)

Requirement for private company, not being a subsidiary of public company, having the paid up capital not exceeding one million rupees for filing with the registrar of authenticated financial statements, whether audited or not, has been omitted.

32. Directors not to withhold declared dividend (Section 243)

Section 243(2) lists certain cases whereby Commission may grant permission on an application made by the company to withhold or defer payment of dividend. Time limit for filling of such application by the company has been curtailed from 45 days to 15 days from the date of declaration of dividend.

33. Unpaid Dividend Account (Section 244)

Section 244 titled “Unclaimed shares, Modaraba certificates and dividend to vest with the Federal Government” is substituted by new section titled “Unpaid Dividend Account” which now require companies to deposit unpaid or unclaimed amount to a separate profit bearing account, and profit over which shall be used for Corporate Social Responsibility Initiatives and specified purposes by the Commission. Important points of the section are described below:

Transfer of total amount of dividend which remains unpaid or unclaimed within fifteen days from the date of expiry of the prescribed period of payment of dividend. Dividend for the purpose of this section means the dividend payable in cash. within a period of ninety days of making any deposit of the amount, the company is required to prepare a statement containing the names, the last known addresses, number of shares held, the amount of unpaid dividend to be paid to each shareholder and such other particulars as may be specified and place it on the website of the company.

The company shall make payment to the bonafide claimant within a period of thirty days from the date of submission of claim with the company. No claimant shall be entitled to any amount except his unclaimed dividend amount.

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

The company shall make appropriate disclosures in its financial statements and in respect of unpaid dividend account providing therein details of amounts transferred into such account, claims received and settled, profits generated from such account and utilization of such profits during a financial year.

34. Establishment of Investor Education and Awareness Fund (Section 245)

Section 245 which contained provisions relating to establishment of “Investor Education and Awareness Fund” has been omitted.

35. Qualification and disqualification of auditors (Section 247)

For a public company or a private company having paid up capital of Rs. 3 Million or more, only Chartered Accountants or having valid practicing license or a Firm of Chartered Accountants were qualified to be appointed as auditors of such company.

This limit of paid up capital has been increased from Rs. 3 million to Rs. 10 Million.

36. Mediation and Conciliation Panel (Section 276)

Section 276 dealing with provisions relating to mediation and conciliation panel has been omitted.

37. Compromise with creditors and Provisions for facilitating reconstruction and Amalgamation of Companies (Section 279 to 287)

Commission’s powers relating to compromise with creditors, schemes of reconstruction and mergers have been High Court for all Companies. Previously, such powers were exercised by Court for such companies or class of companies or having such capital, as were specifically notified.

In the first Amendment Ordinance the SECP powers in sections 279 to 282 to approve compromises, reconstruction and amalgamation of companies has been given to court of law. Now these powers given back to SECP. The SECP Board has recommended to give this powers to Court on the assumption that the Commission has no capacity to exercise said powers in view of complex valuations, legal entitlement of properties, equitable decision making keeping in view rights and obligations of multiple parties and requirements of other regulatory compliances in such cases. It has been reversed through Companies (Second Amendment) Ordinance2020.

38. Handling of unclaimed dividends and undistributed assets (Section 417)

Section 417 has been completely amended and it has been prescribed that in case of company being wound up, any unclaimed dividend or undistributed assets would be handled by liquidator in the manner as prescribed. the account maintained under deleted Section 244.

39. Inactive Company (Section 424)

Concept of Inactive Companies has been omitted

40. Striking off the name of a Foreign Company by the Registrar (Section 443 A)

New section has been added empowering the Registrar to strike-off the name of the Foreign Company, after provision of an opportunity of being heard if;

- 1) the permission by relevant authority is cancelled,
- 2) Company cease to operate due to revocation of license granted by Commission,
- 3) Company has acted against interest, sovereignty and integrity of Pakistan, carrying any fraudulent or prohibited activities, failure to maintain proper books of account, acting not in accordance with the requirements of the charter, statute or memorandum and articles of the company etc.

41. Companies' Global Register of Beneficial Ownership (Section 452)

It has been clarified that a person holding 10% or more in a foreign company or body corporate shall report to the company his shareholding or any other interest for purpose of maintaining Companies' Global Register and submission to registrar. Previously, no percentage was mentioned.

The change in the Section 452, Companies' Global Register of Beneficial Ownership was also reverted back. The SECP through earlier amendment, had made the section 452 less stringent as the requirement for company's directors, shareholders, or officers to report their shareholdings or any other interest in a foreign company was reduced to only those who may have shareholding of 10% or more in a foreign company or body corporate. It has been reversed through Companies (Second Amendment) Ordinance 2020.

42. Acceptance of advances by real estate companies engaged in real estate projects (Section 456)

Application of Section 456 was held in abeyance since the promulgation of Companies Act, 2017. This whole section has now been omitted.

43. Measures for greater ease of doing business (Section 458A)

New Section 458A titled "Measures for greater ease of doing business" has been inserted for promoting ease of starting and doing business relating to innovation and technology.

It states that the Commission may implement measures for providing greater ease of doing business, improving regulatory quality and efficiency and facilitating innovation and the use of technology in conducting business by the corporate sector, including but not limited to-

- (a) formalizing existing practices through regulations and implementing other measures for attaining international standards of regulatory quality and efficiency for greater ease of doing business;
- (b) specifying modes and procedures for enabling greater ease of entry into and exit from the market to start-up companies;

- (c) constituting special task groups from the corporate sector for encouraging the use of financial technology in the conduct of business;
- (d) creating environments for testing and examining the impact of innovation, new processes or technologies outside the existing regulatory framework including but not limited to crowdfunding, digital assets, open application programming interface (APIs), smart contracts, cloud based solutions and allowing the establishment and use of regulatory sandboxes;
- (e) encouraging the use of technology for providing and meeting regulatory reporting requirements, risk assessment, customer due diligence, the issuance of suspicious transaction reports, keeping records and such other requirements as may be specified to meet anti-money laundering and counter-terrorism financing standards;
- (f) improving regulatory compliance and specifying proportionate data-driven standards for the corporate sector to take measures for cyber-security, data sovereignty and algorithm supervision;
- (g) specifying exemptions and incentives under the prevailing laws with the object of fostering innovation, promoting startups and entrepreneurship ecosystem in line with international best practices;
- (h) improving regulatory monitoring, reporting and compliance requirements; and
- (i) prescribing such other frameworks as may be notified by the Commission for stimulating innovation and financial inclusion in the conduct of business by the corporate sector through the use of financial technology, regulatory technology and supervisory technology;

44. Section 459

relating to “Quota for persons with disabilities in the public interest Companies”, Section 460 relating to “Valuation by registered valuers” and Section 461 relating to “Security clearance of shareholder and director” have been omitted.

45. Review and Revision (Section 479A)

A new section has been inserted regarding review and revisions of order issued by the Commission as was provided in the previous Companies Ordinance, 1984.

It states that any order passed by the registrar or an officer exercising powers of the Commission shall be subject to revision by the Commission upon application being made by any aggrieved person or the registrar within sixty days from the date of such order and the order of the Commission in revision shall be final.

Further, Commission or the registrar may, upon an application being made to it within sixty days from the date of any order passed by it otherwise than in revision as above, or if its own motion, review such order; and such order in review shall be final.

45. Penalty for false statement (Section 496A)

A new section has been inserted to provide civil penalty for providing false statement to the Commission. It states that such person shall be liable to a penalty of level 2 on the standard scale.

47. Various amendments made in various section of the Companies Act 2017 replacing the words “Minister-in-charge of the Federal Government” with the words “Federal Government”.

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.

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.

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.

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.

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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