



# Corporate Advisory Services.

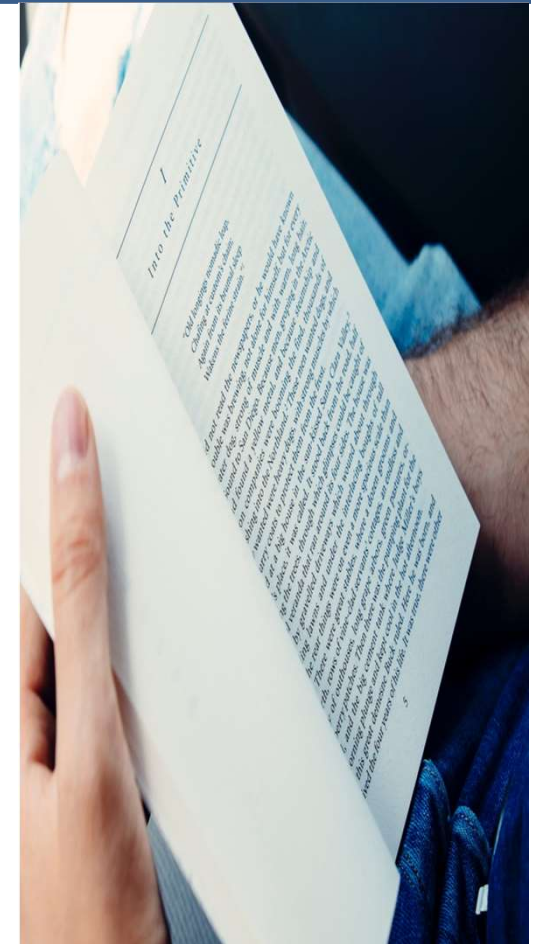


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# COMPANIES ACT 2017.

# COMPANIES ACT 2017 – A brief background.

1. The Companies Ordinance 1984 has been finally **repealed**.
2. Several changes to the company law. **515 sections** and **8 schedules**, and took almost **12 years** in the making.
3. Focus on **maximum** use of electronic forms of communication.
4. Signed by the President of Pakistan on **30th May 2017** and it is effective from the said date save as provided in section 509 (which mentions that sections 282A to 282N related to non-banking finance companies are not repealed).



# SIGINIFICANT CHANGES IN THE ACT.

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# Incorporation



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# Incorporation

1. Registration of companies have now been simplified with **model** memorandum and articles of association.
2. The memorandum should state the principal line of business and any subsequent changes to be notified within **30 days** to the Registrar.
3. The company can engage in any lawful business as per **section 26**.
4. **Directors and CEO** to be appointed at the time of incorporation and no separate filing is required subsequently.
5. **Registered address** is not required at the time of incorporation and application **can be filed using correspondence address only**.
6. **Share money** to be deposited within **30 days** of incorporation.





# Incorporation

1. Receipt of subscription money to be **certified** by a chartered accountant or a cost and management accountant within **45 days** of incorporation failing which shares shall be deemed to be cancelled.
2. Registered office to be intimated within **30 days** of incorporation.



# Incorporation

## Section 19 - Commencement of business by a public company

1. The **acceptance and registration** of documents shall be a **conclusive evidence** that the company is entitled to start its operations and exercise any borrowing powers.
2. No certificate to be issued.





# Memorandum & Articles



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# Memorandum & Articles

## Impact on existing companies

1. They shall continue with their **existing memorandum** and the **object stated at serial number 1 of the object clause** in the memorandum will be treated as the principal line of business.
2. In the event that the object clause stated at serial number 1 is **not** the principal line of business of a company, such company **shall be required to intimate to the registrar** the principal line of business within such time from commencement of the 2017 Act and in the form as may be specified and a revised copy of the memorandum indicating therein the company's principal business at serial number 1 of the object clause is also required to be furnished to the registrar.



# Alteration in Memorandum [section 32] and Articles [section 38]

1. This procedure has been simplified.
2. Alteration would take effect by **special resolution**.
3. Change in principal line of business does not require approval from the Commission, only amended Memorandum to be filed with the Registrar **within 30 days**.
4. Where change is related to **change in place of registered office** and **adoption of any business activity or any change therein which is subject to license, registration, permission or approval** under any law will **require approval from Commission**.
5. A new sub-section has been inserted which states that a copy of the **altered articles of association shall within 30 days from the date of passing of the resolution, be filed** with the registrar for registration as the articles of association of the company.







# Compliance Requirements



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# Compliance Requirements – SMC PVT. LIMITED

1. SMCs are exempted from the following requirements:
  - a. Appointing a company secretary
  - b. Conduct audits of Financial Statements [if the **p/u capital** does not exceed **PKR 1 million** as per **sub section (9) of section 223**]
  - c. Hold general and board meetings
  - d. Notify election of directors
2. Required to file **unaudited FS** with the Commission.
3. **Nominee information** to be provided at the time of incorporation.



# Compliance Requirements – PVT. LIMITED

## Audit of FS

1. Private Companies, not being subsidiaries of public company, having paid up capital of up to **PKR 1 million** are **not** required to conduct **audit** of its financial statements. Only required to file **unaudited** FS. Further, such companies **are mandated to attach an affidavit** with the financial statements to confirm that the financial statements have been approved by the board of the directors. The said affidavit shall be **executed by the CEO or the directors signing the financial statements**, as the case may be.
2. Private Companies with a paid up capital of **more than PKR 1 million and up to PKR 10 million** are required to conduct audit of FS but **are not required to file** the audited FS with the Commission. Only required to file **unaudited** FS.

## Annual Returns

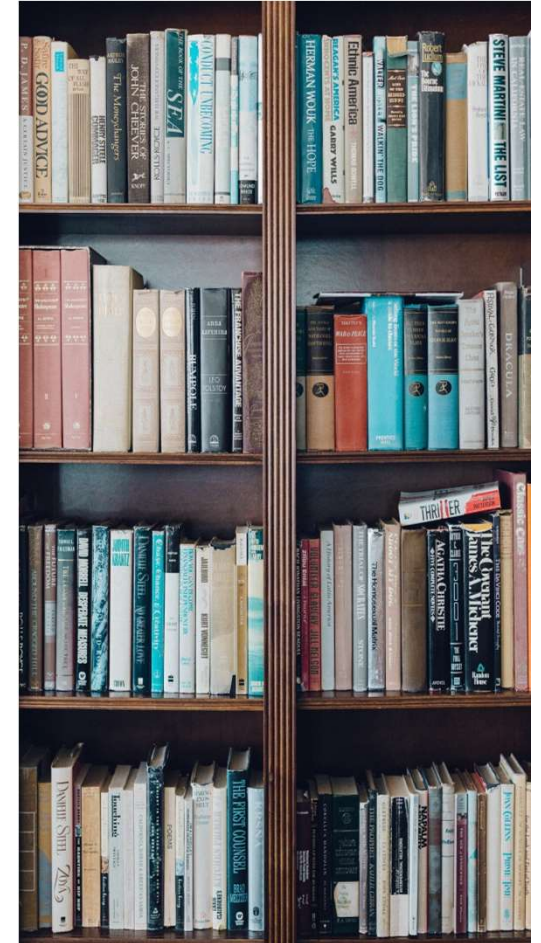
1. Private Companies having a paid up capital of **not more than PKR 3 million** are **not required to file annual return** provided there is **no change in the particulars from the prior year**. They are only required to notify the fact of no change to the Registrar.



# Compliance Requirements – PVT. LIMITED

## Other

1. Private companies are **now exempted** to prepare consolidated statements if **neither the holding company nor the subsidiary** have a paid up capital **exceeding PKR 1 million.**
2. Directors report **not mandatory** for private companies, not being subsidiary of public company, having a paid up capital **not exceeding PKR 3 million.**



## Other Compliance Requirements

## **Section 250 - Audit of cost accounts**

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





## Other Changes for companies

## **Section 133 - Calling of extraordinary general meeting**

1. The board may at any time call an extraordinary general meeting (EOGM) of the company to consider any matter which **requires the approval of the company in a general meeting**. At least 21 days' notice shall be given to the members.
2. Requirement of **seeking approval** from Registrar for holding EOGM by **unlisted** companies at a **shorter notice abolished**. Previously it was expressly stated that notice of an EOGM and in case of emergency affecting the business of the company, the registrar on application of directors authorize such meeting to be held at a shorter notice. **However**, such requirement is no longer mentioned.



# Other Changes for companies

## Section 149 (this is a new section) - Passing of resolution by the members through circulation

1. The members of a private company or a public unlisted company (**having not more than 50 members**) to **pass a resolution** (ordinary or special) **by circulation** signed by all the members entitled to receive notice of a meeting.
2. A **members' agreement** to a written resolution, passed by circulation, **once signified, may not be revoked.**
3. Such resolution is **not valid** for the following business:
  - a. the consideration of financial statements and the reports of the board and auditors;
  - b. the declaration of any dividend;
  - c. the election and appointment of directors in place of those retiring; and
  - d. the appointment of the auditors and fixation of their remuneration.





# Registration and Satisfaction of Mortgages or Charges



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# Registration of Mortgages or Charges [section 100]

1. Companies that create a charge must file or register the particulars along with a copy of instrument with the Registrar **within a period of 30 days beginning with the day after the date of the creation of the mortgage or charge.** Under the repealed Ordinance it was 21 days.
2. The term “charge” **includes mortgage or pledge.** Under the repealed Ordinance a pledge over movable properties was not required to be registered. Under the new Act, **a mortgage or charge or pledge**, on any movable property of the company is now required.



# Satisfaction of Charge [section 109]

1. The **procedure for satisfaction of charge simplified**. If the mortgagee confirms repayment of loan and issues NOC to that effect show cause would not be sent by Registrar to mortgagee and satisfaction would be recorded.







# Appointment of Additional Director in mid-term



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# Appointment of Additional Director in mid-term

## Section 162 (this is a new section) - Fresh election of directors

1. A member having acquired, after the election of directors, the **requisite shareholding** to get him elected as a director may require the company to hold fresh election of directors of unlisted company in accordance with the procedure laid down in section 159.
2. The Board shall proceed to hold fresh election within **30 days** of the request.
3. A **listed company** for the purpose of fresh election of directors shall follow such procedures **as may be specified by the Commission.**





# Concept of Inactive Company



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# Concept of Inactive Company

## Section 424 (this is a new section) - Inactive Company

### New Definitions

- (a) “**Inactive company**” means a company, other than a listed company, which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years;
- (b) “**Significant accounting transaction**” means any transaction **other than-**
- payments made by it to fulfill the requirements of this Act or any other law;
  - allotment of shares to fulfill the requirements of this Act; and
  - payments for maintenance of its office and records.



# Concept of Inactive Company

## Section 424 (this is a new section) - Inactive Company

1. This is a new provision dealing with companies (other than listed companies) which are formed for a future project or to hold an asset or intellectual property and have no **significant accounting transaction** and which are not carrying out any business activity.
2. Such a company or an **inactive company** may make an application to the registrar in such manner as may be specified for obtaining the status of an inactive company.
3. During the inactive period the company **shall not be required to comply with the regular compliance requirements** and a minimal filing requirement in this regard shall be required as **may be specified by the Commission through regulations**.





# Concept of Inactive Company

## Section 424 (this is a new section) - Inactive Company

4. The **Registrar** can by giving a notice to a company which has **not filed financial statements or annual returns for two financial years consecutively**, enter the name of the company in the register of inactive companies.
5. The inactive status **may be changed** through on an application made in this behalf accompanied by such documents as may be specified by the Commission through regulations





# Special Return



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## Special Return

## Section 465 (this is a new section) - Special return to rectify the data

1. A company is required to inform the registrar about any change of **more than 25% in its shareholding or membership or voting rights** in a manner as may be specified by the Commission.





# Filing of Documents through Intermediaries



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# Filing of documents through Intermediaries

## Section 455 (this is a new section) - Filing of documents through intermediaries

1. Concept of intermediaries has been introduced.
2. An intermediary intending to provide services must possess the **requisite qualification** and **be registered** with the Commission in the manner as may be specified.
3. **Only authorized intermediaries** will be eligible to provide services to the corporate sector.
4. Intermediaries have been enabled to **sign and file documents** on behalf of companies.
5. The **authorized intermediary** shall be **responsible for the acts and omissions of all employees to whom it has delegated its functions as an authorized intermediary**.







# Acceptance of documents presented after prescribed time



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**Acceptance of documents presented after prescribed time**

## **Section 468 - Acceptance of documents presented after prescribed time**

1. A company **other than public interest company** can file its returns **within 2 years** from the due date with additional fee as follows:
  - a. within 90 days, a fee equivalent to **two** times;
  - b. within 180 days, a fee equivalent to **three** times;
  - c. within 1 year, a fee equivalent to **four** times;
  - d. within 2 years, a fee equivalent to **five** times;

of the prescribed fee payable in respect thereof.

**No proceedings** shall be initiated against the company for such delay.





# Maximum use of technology



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# Maximum use of Technology

1. Service of documents/notices to the members, registrar and the Commission through **electronic means**
2. **Participation in the meetings** by members and directors through video links
3. **Voting** through electronic means
4. Enabling provision empowering the Commission to notify **mandatory on-line filing**





# Issuance of shares in book-entry form



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# Issuance of shares in book-entry form

## Section 72 (this is a new section) - Issuance of shares in book-entry form

1. Requires a company having a share capital, to have shares in **book-entry form only**, from a date notified by the Commission.
2. Existing companies shall replace its physical shares with book-entry form **within 4 years from the commencement of the 2017 Act**.
3. The Commission may, if it deems appropriate, **extend the period for another 2 years**.





# Transfer of Shares



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## Transfer of shares

## **Section 74 - Transfer of shares and other securities**

1. The word 'debenture' has been replaced with 'other securities'
2. The **time period** to complete the share transfer process, which includes delivering of the certificates to the transferee and entering name of transferee in register of members, by the company has now been prescribed as **within 15 days of receipt of an application for registration of transfer of shares.**
3. In case of **conversion into book-entry form**, the company shall register such transfer in the name of the central depository **within 10 days after an application is made for the registration** of the transfer of any shares or other securities to a central depository.



# Transfer of shares

## Section 75 - Board not to refuse transfer of shares

1. The board shall not refuse to transfer any shares or securities unless the transfer deed is, for any reason, defective or invalid.
2. Time period for notifying any defect or invalidity to the transferee by the company in the transfer application /transfer deed has been **reduced** from 30 days to **15 days**, and where the transferee is a central depository, the time period is **within 5 days** from the date on which the instrument of transfer was lodged.



# Transfer of shares

## Section 76 (this is a new section) - Restriction on transfer of shares by the members of a private company

1. A member of a private company desirous of selling any shares held by him/her, shall notify to the board of his/her intention **through a notice**.
2. The board shall, **within a period of 10 days of receiving such notice**, offer those shares for sale to the members in proportion to their existing shareholding.
3. However, a private company may transfer or sell its shares **in accordance with its articles and agreement among the shareholders**, if any, entered into prior to the commencement of the 2017 Act, subject to the condition that any such agreement will be **valid only if it is filed with the registrar within 90 days of the commencement of the 2017 Act**.





# Transfer of shares

## Section 76 (this is a new section) - Restriction on transfer of shares by the members of a private company

4. The letter of offer for sale specifying **the number of shares to which the member is entitled, price per share and specifying the time limit**, within which the offer, if not accepted, be deemed as declined, shall be dispatched to the members through **registered post** or **courier** or through **electronic mode**.
5. If the **whole or any part** of the shares offered is declined or is not taken, the board may offer such shares to the other members in proportion to their shareholding.
6. If all the members decline to accept the offer or if any shares are left over, the **shares may be sold to any other person as determined by the member, who initiated the offer**.
7. For the purpose of this section, the **mechanism to determine the price of shares** shall be such, as may be specified through regulations.





# Transfer to nominee of a deceased member



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## Transfer to nominee of a deceased member

## **Section 79 - Transfer to nominee of a deceased member**

1. This sections has been amended to align it with Islamic Law.
2. Now **only one person** (under the repealed Ordinance it was one or more persons) can be nominated by a member, who will be a trustee, to facilitate the transfer of shares to the legal heirs of the deceased subject to succession to be determined under the Islamic law of inheritance and in case of a non-Muslim members, as per their respective law.
3. The person to be nominated shall not be a person other than the relatives of the member, namely, **a spouse, father, mother, brother, sister and son or daughter.**
4. The person nominated shall, after the death of the member, **be deemed as a member of company till the shares are transferred to the legal heirs** and if the deceased was a director of the company, not being a listed company, **the nominee shall also act as director of the company to protect the interest of the legal heirs.**



# Transfer to nominee of a deceased member

## Section 79 - Transfer to nominee of a deceased member

5. The same concept has also been made applicable to **single member company** and information is required to be submitted at the time of incorporation of company





# Mediation and Conciliation Panel



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# Mediation and Conciliation Panel

## Section 276 (this is a new section) - Mediation and Conciliation Panel

1. Commission is **empowered** to maintain a panel of experts called **Mediation and Conciliation Panel** consisting of individuals having such qualifications as may be specified for mediation between the parties during the pendency of any proceedings before the Commission or the Appellate Bench under this Act.
2. Relevant parties to proceedings may with **mutual consent** approach the Commission or Appellate Bench to constitute the panel.
3. The panel is **required to dispose** of the matter referred to it within a period of **90 days** from the date of such reference and forward its recommendations to the Commission or the Appellate Bench, as the case may be.





# Facilitation of Corporate Exits



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# Facilitation of Corporate Exits

## Section 426 (this is a new section) - Easy exit of a defunct company

1. Enabling provision added to facilitate a company which **ceases to operate** and has **no known assets and liabilities**, may apply to the registrar in the specified manner, seeking to strike its name off the register of companies.





# Amalgamation of Companies



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# Amalgamation of Companies

## Section 282 - Powers of Commission to facilitate reconstruction or amalgamation of companies

1. **Jurisdiction** to allow merger, amalgamation and reconstruction of companies has been shifted from the **Court to the Commission**. As per SECP, initially the Commission would deal cases of **Small** Companies.
2. This section **now specifies** that where an order has been made by the Commission for the aforementioned the following documents shall be **required to be circulated for the meeting so ordered by the Commission**:
  - a. **draft of the proposed terms** of the scheme **adopted by the board** of each of the applicant companies;
  - b. **confirmation** that a copy of the draft scheme has been **filed** with the **registrar**;
  - c. a report adopted by the board of the applicant companies explaining **effect of compromise** on each class of members, laying out in particular the **share swap ratio**, specifying any **special valuation difficulties**;
  - d. the **report of the expert** with regard to valuation, if any;
  - e. a **supplementary audited financial statements** if the last annual accounts of any of the applicant company relate to a financial year ending more than **180 days** before the first meeting of the company summoned for the purposes of approving the scheme.





# Amalgamation of Companies

## Section 284 (this is a new section) - Amalgamation of wholly owned subsidiaries in holding company

1. New provision added to facilitate the amalgamation where the **Board of Directors are empowered** to approve the amalgamation of:
  - a. Subsidiaries of a holding company; or
  - b. Wholly owned subsidiaries into its holding company
2. **No approval** of the Commission or the court would be required.
3. The Board of each amalgamating company must, not less than **21 days before the amalgamation** is proposed to take effect, give **written notice** of the proposed amalgamation to **every secured creditor** of the company.
4. The detailed procedure is laid down in the section.



# Amalgamation of Companies

## Section 284 (this is a new section) - Amalgamation of wholly owned subsidiaries in holding company

5. The transferee company **shall file a copy of the scheme** so approved in the manner as may be specified, with the registrar where the registered office of the company is situated.





# Introduction of new company types



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# Introduction of new company types

## Section 451 (this is a new section) - Certification of Shariah compliant companies and Shariah compliant securities

1. Shariah compliant company is defined in the Act as a company which is conducting its business **according to the principles of Shariah**.
2. No company shall be called a Shariah compliant company unless it is conducting its business according to the principles of Shariah **and** it has **obtained a certificate of Shariah compliance** from the Commission.
3. No company shall appoint or engage any person for Shariah compliance, Shariah advisory, or Shariah audit unless that person meets the fit and proper criteria and fulfills such terms and conditions as may be specified through regulations.
4. **Nothing** shall apply to a **banking company** or any other company which is required to follow the Shariah governance framework **prescribed by the State Bank of Pakistan**.





# Introduction of new company types

## Section 457 (this is a new section) - Agriculture Promotion Companies

### New Definitions

1. **"Agriculture Promotion Company"** includes a Producer Company or a Collateral Management Company involved in Produce.
  - a. **"Producer Company"** means any company, with or without share capital, formed under this section **by farmers** and engaged in any activity connected with or related to any Produce. Every Producer Company **shall deal primarily** with the produce of its members for carrying out any of its activities.
  - b. **"Collateral Management Company"** means any company to engage in the activity of managing produce as collateral, including warehousing, facilitation of commodity financing, and stock audit and verification services





## Introduction of new company types

## Section 457 (this is a new section) - Agriculture Promotion Companies

2. A person may establish **Agriculture Promotion Company** having its principal 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.
3. Any dues outstanding against Agriculture Promotion Company under this section shall be recoverable as **arrears of land revenue**.
4. Minister-in-Charge of the Federal Government has been **empowered to exempt** such Companies from any provisions of law for the time being in force **[section 458]**.



# Introduction of new company types

## Section 454 (this is a new section) - Free Zone Company

1. Concept of a “free zone” company has been introduced whereby a company incorporated for the purpose of carrying on business in the **export processing zone (EPZ)** or an area notified by the Federal Government as free zone, **shall be eligible to such exemptions from the requirements of this Act as may be notified in section 458.**
2. Minister-in-Charge of the Federal Government has been **empowered to exempt** such Companies from any provisions of law for the time being in force [**section 458**].
3. The information of **foreigners** in companies in EPZ and other free zones declared by the Federal Government **shall not be publicly available.**
  - i. the restriction of non-disclosure contained in this section **shall not apply to the revenue authorities collecting tax, duties and levies or requirement or obligation under international law, treaty or commitment of the Government.**



# Introduction of new company types

## Section 454 (this is a new section) - Free Zone Company

4. **Annual renewal fee** for companies incorporated as Free Zone Company is **PKR 100,000**.





# Corporate Governance



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# Corporate Governance

## **Section 156 - Compliance with the Code of Corporate Governance**

- 1. Code of Corporate Governance** enabling provision has been added.
- 2.** The Commission may provide for framework to ensure good corporate governance practices, compliance and matters incidental and axillary for companies or class of companies in a manner **as may be specified.**





# Corporate Governance

## Section 211 (this is a new section) - Restriction on non-cash transactions involving directors

1. Restriction on selling/purchasing any asset to/from director or a connected person for consideration **other than cash** without approval of members of the company in general meeting; **and**
2. If the director or connected person is a director of its holding company, approval shall also **be required to be obtained by passing a resolution** in general meeting of the holding company.
3. The company **must ensure** that all cash transactions with its directors are conducted **only through banking channels**.



# Corporate Governance

## Section 155 - Number of directorships

1. No person shall, after the commencement of this Act, hold office as a director, including as an alternate director at the same time in **more than such number of companies as may be specified by the Commission**. This limit shall not include directorships in a listed subsidiary.
2. A person holding the position of director **in more than 7** companies (which is the **current maximum**) on the commencement of this Act shall ensure the compliance of this section **within one year** of such commencement.
3. Casual vacancy on the board of a **listed company** shall be filled up by the directors at the earliest but **not later than 90 days** from the date the vacancy occurred.



# Corporate Governance

## **Section 232 - Approval and authentication of Financial Statements**

1. Financial statement in the case of a **listed company** are also required to be signed by the **chief financial officer** in addition to the chief executive and **at least 1 director** of the company.
2. When the chief executive is for the time being **not available in Pakistan**, then the financial statements may be signed by **at least two directors**
3. The financial statements of a **single member company** are required to be **signed by 1 director**. This was not mentioned under the repealed Ordinance.
4. In case of Private Company having paid up capital up to **PKR 1 million**, financial statements shall also be accompanied by an **affidavit** executed by Chief Executive Officer/Directors who have signed accounts that these have been **approved by the Board**.



# Corporate Governance

## **Section 174 - Prohibition on assignment of office by directors**

1. This section has been amended to **prohibit** a director of any company from assigning his office to any other person and **any such appointment shall be void.**
2. The appointment by a director, **with the approval of the board**, of an alternate or substitute director to act for him during his absence from Pakistan of **not less than 90 days**, **shall not be deemed** to be an assignment of office.





# Corporate Governance

## Section 182 - Loans to directors: requirement of members' approval

1. This section has been completely **revised** and is **not applicable** to companies which in the ordinary course of its business provides loans or gives guarantees or securities.
2. A company **shall not without the approval by a resolution of the members** and in case of **listed company without the approval of the Commission**:
  - a. make a loan to a director of the company or of its holding company; or to any of his relatives;
  - b. give a guarantee or provide security in connection with a loan made by any person to such a director; or to any of his relatives;

**"relative"** in relation to a director means his spouse and minor children.





# Corporate Governance

## Section 183 - Powers of the board

1. The **powers** of the board have been **extended** to include **take over of a company or acquire a controlling or substantial stake in another company.**
2. The board of **all** companies are now **required to have the consent** of the general meeting either specifically or by way of an authorization for 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



# Corporate Governance

## Section 183 - Powers of the board

3. **“sizeable part”** in any financial year shall mean **25% or more** of the value of the assets in that class as per the audited financial statements of the preceding financial year.
4. **“undertaking”** means an undertaking in which the investment of the company **exceeds 20% of its net worth** as per the audited financial statements of the previous financial year or an undertaking which generates **20% of the total income** of the company during the previous financial year.



# Corporate Governance

## Classification of Companies

1. **Classification** of companies outlined in the Act under **Third Schedule** as follows:
  - a. Public Interest Company & Large Sized Company (PILSC)
  - b. Medium Sized Company (MSC)
  - c. Small Sized Company (SSC)
2. Different disclosure requirements have been outlined in subsequent schedules.



# Corporate Governance

## Section 215 (this is a new section) - Liability for undesired activities of the shareholders

1. This section is inserted to prescribe the code of conduct for the members with **level 1 penalty** for non-compliance.
2. All members required to **act in good faith and should not disrupt proceedings of the meetings** or smooth functioning of management.
3. All members of the company **are prohibited** from exerting influence or approaching the management directly for decisions which may lead to create hurdle in the smooth functioning of management.





# Corporate Governance

## Section 166 (this is a new section) - Manner of selection of independent directors and maintenance of databank of independent directors

1. An independent director is **required** to be selected from a **data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors.**
2. The data bank will be maintained by any institute, body or association as may be notified by the Commission However, the **responsibility of exercising due diligence** before selecting a person from the data bank **shall lie with the company.**
3. The independent director will be **elected in the same manner** as other directors.
4. No individual shall be selected for the data bank **without his consent in writing.**





# Corporate Governance

1. Public interest companies **shall be required to have female representation** on their board as may be specified by the Commission **[section 154]**.
2. To avoid potential conflict of interests between the two positions, the **offices of chairman and chief executive** have **been separated** and the Commission may specify the classes of companies for which the chairman and chief executive shall not be the same individual.
3. The board of a **listed company** shall **within 14 days from the date of election of directors** appoint a chairman from among the **non-executive directors who shall hold office for a period of 3 years** **[section 192]**.



# Corporate Governance

## Section 204 (this is a new section) - Duties of directors

1. New section has been introduced to define **roles and responsibilities** of the directors.
2. Whereby a director is **required** to *inter alia* act in accordance with the articles of the company; act in **good faith** and discharge his duties with **due and reasonable care**, skill and diligence and **exercise independent judgment**; not get involved where he may have a conflict with the interest of the company; **not achieve any undue gain or advantage** either to himself or his relatives, partners or associates and not assign his office.
3. Any breach of duty, default or negligence by a director in contravention of the articles of the company or any of its policy or decision of the board may be **ratified** by the company through a **special resolution** and the Commission may **impose any restriction** as may be specified.



# Corporate Governance

## Section 208 (this is a new section) - Related party transactions

**“Related party”** includes

- (i) a director or his relative;
- (ii) a key managerial personnel or his relative;
- (iii) a firm, in which a director, manager or his relative is a partner;
- (iv) a private company in which a director or manager is a member or director;
- (v) 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;
- (vi) any body corporate whose chief executive or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:  
Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;
- (viii) any company which is-
  - (A) a holding, subsidiary or an associated company of such company; or
  - (B) a subsidiary of a holding company to which it is also a subsidiary;
- (xi) such other person as may be specified;





## Corporate Governance

## Section 208 (this is a new section) - Related party transactions

1. Related party transactions other than on arm's length required to be in **accordance with policy approved by the board.**
2. A company may enter into any contract or arrangement with a related party in **accordance with the policy approved by the board** in respect of
  - a. sale, purchase or supply of any goods or materials;
  - b. selling or otherwise disposing of, or buying, property of any kind;
  - c. leasing of property of any kind;
  - d. availing or rendering of any services;
  - e. appointment of any agent for purchase or sale of goods, materials, services or property; and
  - f. such related party's appointment to any office or place of profit in the company, its subsidiary company or associated company
3. Where majority of the directors are interested in any of the above transactions, the matter shall be placed before the **general meeting for approval as special resolution.**



# Corporate Governance

## Section 208 (this is a new section) - Related party transactions

4. Every contract or arrangement entered into with a related party is **required to be stated in the board's report to the shareholders along with the justification for entering into such contract or arrangement.**
5. As per the **fourth and fifth schedules**, names of related parties shall be **disclosed** in the financial statements
4. Any director or any other employee of a company who violates the requirements of this section will be **in case of listed company, be punishable with imprisonment for a term** which up to **3 years** or with fine which shall not be less than **PKR 5 million**, or with both; and **in case of any other company, to a penalty of level 2 on the standard scale.**





# Corporate Governance

## Section 227 - Contents of directors' report and statement of compliance

1. A **comprehensive list** of items or matters to be included in the directors' report has been laid out. Refer to the **sub-section (2) of the provision for the list**.
2. The said list of items are **required** to be specifically stated in a directors' report of a **public company** or a **private company which is a subsidiary of a public company**.
3. In the case of **listed company**, to the extent necessary for an understanding of the **development, performance or position of the company's business**.



# Corporate Governance

## Section 453 (this is a new section) - Prevention of offences relating to fraud, money laundering and terrorist financing

1. Requires that every officer of a company shall endeavor to **prevent** the commission of any fraud, offences of money laundering including predicated offences as provided in the **Anti-Money Laundering Act, 2010 (VII of 2010)** with respect to affairs of the company.
2. Adequate measures for this purpose are **required** to be implemented.
3. Failure to comply may attract **punishment** of imprisonment for a term up to **3 years** and with fine which may extend to **PKR 100 million**.



# Corporate Governance

1. A **public company must have** a company secretary; possessing such qualification as may be specified. **[section 194]**.
2. Every **listed company** shall have an **independent share registrar** possessing such qualifications and performing such functions as may be specified. **[section 195]**.





# Corporate Social Responsibility



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# Corporate Social Responsibility

## Section 459 (this is a new section) - Quota for persons with disabilities in the public interest companies

Every **public interest company**, employing **100 or more** employees shall ensure **special quota** for employment of persons with **disabilities** of **2 percent** or such higher percentage as may be specified or required under the applicable Federal and Provincial law.







# Regulatory Framework



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# Regulatory Framework

## Section 258 (this is a new section) - Serious Fraud Investigation

Commission has been **empowered** to conduct investigation proceedings relating serious fraud and if in it is in the interest of public at large, the Commission may request the concerned Minister-in-Charge of the Federal Government to **form a Joint Investigation Team**.

## Section 258 (this is a new section) - Disqualification orders

Commission may pass a disqualification order against a person to hold the office of a director of a company for a **period up to 5 years** from the date of the order. The circumstances under which such order may be made by the Commission **are listed in this section**.



## Regulatory Framework

## **Section 255 - Seizure of documents by registrar, inspector or investigation officer**

The registrar, inspector or investigation officer have been empowered when **in the course of any proceedings or investigation** under the 2017 Act to, with the prior permission of the Commission (**but without warrants**), enter such place and cause a search to be made at any time **freeze, seize or take possession of** and retain any document, object, article, material, thing, account books, movable or immovable property or cause any account, property or thing to be maintained in specific manner.



# Regulatory Framework

## Section 241 - Dividend to be paid only out of profits

1. Companies are now allowed to **pay dividend in kind**, as well as cash out of its profits.
2. The **payment** of dividend **in kind** shall only be **in the form of shares of listed company** held by the distributing company.

## Section 242 - Dividend not to be paid except to registered shareholders

1. Any dividend payable in cash may be paid by cheque or warrant or in any **electronic mode** to the shareholders entitled to the payment of the dividend, **as per their direction**.
2. In case of a listed company, any dividend payable in cash shall **only be paid through electronic mode** directly into the bank account designated by the entitled shareholders.
3. In the event dividend has been declared by a company but **is not paid within the period specified**, the chief executive shall be **punishable with imprisonment** for a term which may extend to **2 years** and with **fine** which may extend up to **PKR 5 million**.



# Regulatory Framework

## Section 243 - Directors not to withhold declared dividend

The company may **withhold the payment of dividend** of a member where the member has not provided the complete information or documents as specified by the Commission. (NIC details etc.)





## Regulatory Framework

**Section 244 (this is a new section) - Unclaimed shares, modaraba certificates and dividend to vest with the Federal Government**

1. This is a new provision in relation to **unclaimed shares** of a company or Modaraba certificates which have been issued; dividends have been declared, **which remain unclaimed or unpaid for a period of 3 years** from the date it is due and payable, or any other instrument or amount which remain unclaimed or unpaid. After the expiry of such period the company shall give a **90 days' notice** to its shareholders or certificate holders.
2. Every company is **required** to submit to the Commission a return of all **unclaimed shares, modaraba certificates, the instruments or dividend in its books, within 30 days** of the close of each financial year.
3. Whoever contravenes the provisions of this section shall be punishable with a **penalty of level 3** on the standard scale.



# Regulatory Framework

## Section 247 - Qualification and disqualification of auditors

1. In the case of a **public company** or a **private company which is subsidiary of a public company** or a **private company** having **paid up capital of PKR 3 million or more: CA having valid certificate of practice.**
2. In the case of paid up capital **up to PKR 3 million: CA or CMA having valid certificate of practice.** Under the repealed Ordinance any person was allowed to be appointed as auditor.



# Regulatory Framework

## Section 439 (this is a new section) - Power of the Commission to require information from foreign companies

1. The Commission **may call upon the foreign company** and any of its officers to furnish the information about the shareholding including beneficial ownership or such other information or document, as may be required for the purposes of the 2017 Act.
2. **“foreign company”** means any company or body corporate incorporated outside Pakistan, which—
  - a. has a place of business or liaison office in Pakistan whether by itself or through an agent, physically or through electronic mode; or
  - b. conducts any business activity in Pakistan in any other manner as may be specified.
3. Whoever fails to provide any information or document required will be liable to a **penalty of level 3** on standard scale.



# Regulatory Framework

## Section 452 (this is a new section) - Companies' Global Register of Beneficial Ownership

| Information required to be reported                                   | File By                                                                                                                                                                                                                                                                                                                           | File To   | Within time period                                                                                                                                                    |
|-----------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Shareholding or other interest in a foreign company or body corporate | <ul style="list-style-type: none"><li>- <b>Shareholders who have a minimum of 10%</b> of shareholding or voting rights; and</li><li>- <b>Officers</b> of companies including CEO, Directors, CFO, Company Secretary, or other authorized officer;</li></ul> <p>Who are Pakistani citizens, including dual citizenship holders</p> | Company   | <b>14 days</b> of the notification no.SRO.546(I)/2017 dated 21 <sup>st</sup> June, 2017, and subsequently within <b>30 days</b> of holding such position or interest. |
|                                                                       | <b>Company</b>                                                                                                                                                                                                                                                                                                                    | Registrar | <b>60 days</b> from the commencement of the Companies Act, 2017 promulgated on 30th May, 2017, and subsequently with the <b>annual return</b> of the company.         |



# Real Estate Companies



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# Real Estate Companies

## Section 456 (this is a new section) - Acceptance of advances by real estate companies engaged in real estate projects

1. The objective of this provision is to ensure that **advances received from individual by companies, which conduct real estate business is protected and used only for the purpose of development of those projects** for which these advances have been obtained.
2. This provision has also laid down stringent criteria (please refer to sub-section 2 of the section for the detail criteria) to be adhered to by a company engaged in a **“real estate project”**, including **approval of the Commission.**





# Valuation



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# Valuation

## Section 460 (this is a new section) - Valuation by registered valuers

1. Newly inserted provision to introduce a framework for professional valuers, their registration and to regulate their activities.
2. Where a valuation is required to be made in respect of any **property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities** under the provision of the Act, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be specified through regulations.
3. **The valuer shall prepare his report in such manner and applying such approaches, as may be specified through regulations.**
4. If a valuer contravenes the provisions of this section or the regulations made thereunder, the valuer shall be liable to a penalty of **level 2 on the standard scale.**





# Penalty Slabs



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# Penalty Slabs

**Section 479 (this is a new section) - Adjudication of offences and standard scale of penalty**

**The standard scale consists of:**

| Level | Limit of penalty      | Per day penalty during which the default continues |
|-------|-----------------------|----------------------------------------------------|
| 1     | Up to PKR 25,000      | Up to PKR 500                                      |
| 2     | Up to PKR 500,000     | Up to PKR 1,000                                    |
| 3     | Up to PKR 100 million | Up to PKR 500,000                                  |







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# Thank You.

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