Brief on the
Companies Ordinance 2016
EY Ford Rhodes
New Companies Ordinance, 2016
in Pakistan

Significant Legislative Changes & new concepts

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A brief containing significant legislative changes

The major focus of the new company law is the facilitation to the corporate sector and other stakeholders as well as strengthening of the regulatory framework, maximum emphasis on the use of technology, abolish unnecessary requirements, protection of the interest of shareholders, a softer regime for companies without public stakes.

The new law also facilitates regulation of public sector companies and protection of interest of creditors. Other features include the introduction of use of technological advancements by allowing communication between company and its members and the company and the registrar through electronic means, passing of resolution by members through circulation, minimum regulatory requirements for single member companies, added responsibilities for the directors and auditors, additional safeguards for the creditors and investors and improved regime for winding up proceedings.

One of the most significant changes, in line with the other jurisdictions, is that except for the prohibited and specialized businesses, companies are allowed to engage in all the lawful businesses. A simple one-page memorandum having principal line of business and prohibitory clauses has been introduced. Under the repealed Ordinance there was no provision to allow the appointment of additional director in mid-term to enlarge the Board, this lacuna has been removed in the new law.

Keeping in view the importance of Islamic Finance, the concepts of "Shariah-compliant Company" and "Shariah-compliant security" have also been introduced.

Further in an increasingly global world, new concepts have been adopted such as specie dividend, mediation and reconciliation, complete regime for the valuation of assets, shifting of jurisdiction to approve the amalgamation of companies, compromises and arrangements from Court to SECP, no approval requirement for amalgamation of wholly owned subsidiaries, e-intermediaries for filing the returns of the companies having no IT infrastructure, qualification requirement for the auditor of companies having paid up capital of less than Rs.3 million and removing redundant and unnecessary obligations contained in the repealed Companies Ordinance, 1984.

The new Companies Ordinance, 2016 has been promulgated on 11 November 2016 and it is applicable from the date of its promulgation.

The New Ordinance has been placed as “The Companies Bill 2016” before the National Assembly of Pakistan for their consideration and approval to promulgate as an Act of Parliament. The National Assembly Standing Committee on Finance considered the Bill and constituted a sub-committee for further deliberations on the said Bill.
DEFINITIONS

1. Associate Companies and Associated Undertakings

The definition of associated companies and associated undertakings has been amended to exclude companies interconnected by virtue of directorship of a person appointed as an independent director. The change will help bring the definition in line with the definition of related party as per International Financial Reporting Standards.

2. Beneficial Ownership of Shareholders or Officer of a company

The term means ownership of securities beneficially owned, held or controlled by any officer or substantial shareholder directly or indirectly, either by:

- him or her;

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

- the minor son or daughter of an officer where “son” includes step-son and “daughter” includes step-daughter; and “minor” means a person under the age of eighteen years;

- in case of a company, where such officer or substantial shareholder is a shareholder, but to the extent of his proportionate shareholding in the company:

Provided that “control” in relation to securities means the power to exercise a controlling influence over the voting power attached thereto:

Provided further that in case the substantial shareholder is a non-natural person, only those securities will be treated beneficially owned by it, which are held in its name.

‘substantial shareholder’ in relation to a company means a person who has interest in shares of a company:

- the nominal value of which is equal to or more than 10% of the issued share capital of the company; or

- which enables the person to exercise or control the existence of 10% or more of the voting power at a general meeting of the company.

3. Body Corporate

‘Body corporate’ or ‘corporation’ includes:

- a company incorporated under this Ordinance or company law; or

- a company incorporated outside Pakistan; or

- a statutory body declared as body corporate in the relevant statute, but does not include:

- a co-operative society registered under any law relating to cooperative societies; or

- any other entity, not being a company as defined in this Ordinance or any other law for the time being in force, which the concerned Minister-in-Charge of the Federal Government may, by notification, specify in this behalf.

4. Chief Financial Officer

Chief Financial Officer means an individual appointed to perform such functions and duties as are customarily performed by a chief financial officer.
5. Financial Period

“financial period” in relation to a company or any other body corporate, means the period (other than financial year) in respect of which any financial statements thereof are required to be made pursuant to this Ordinance.

6. Financial Statements

Financial statements in relation to a company, includes:

a) a statement of financial position as at the end of the period;

b) a statement of profit loss and other comprehensive income or in the case of a company carrying on any activity not for profit, an income and expenditure statement for the period;

c) a statement of changes in equity for the period;

d) a statement of cash flows for the period;

e) notes, comprising a summary of significant accounting policies and other explanatory information;

f) comparative information in respect of the preceding period;

g) any other statement as may be prescribed.

7. Financial Year

“financial year” in relation to a company or any other body corporate, means the period in respect of which any financial statement of the company or the body corporate, as the case may be, laid before it in general meeting, is made up, whether that period is a year or not.

8. Government

“government” includes Federal Government or, as the case may be, Provincial governments unless otherwise expressly provided in this Ordinance.

9. Officer

“officer” includes any director, chief financial officer, company secretary or other authorised officer of a company.

10. Public Sector Company

“public sector company” means a company, whether public or private, which is directly or indirectly controlled, beneficially owned or not less than fifty-one percent of the voting securities or voting power of which are held by the Government or any agency of the Government or a statutory body, or in respect of which the Government or any agency of the Government or a statutory body, has otherwise power to elect, nominate or appoint majority of its directors and includes a public sector association not for profit, licenced under section 42:

Provided that nomination of directors by the Commission on the board of the securities exchange or any other entity or operation of any other law shall not make it a public sector company.

11. Shariah Compliant Company

“Shariah compliant company” means a company which is conducting its business according to the principles of Shariah.

12. Subsidiary Company or Subsidiary

“subsidiary company” or “subsidiary”, in relation to any other company (that is to say the holding company), means a company in which the holding company:
a) controls the composition of the board; or

b) exercises or controls more than one-half of its voting securities either by itself or together with one or more of its subsidiary companies.

Provided that such class or classes of holding companies shall not have layers of subsidiaries beyond such numbers, as may be notified.

For the purpose of this clause:

a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (a) or sub-clause (b) is of another subsidiary company of the holding company;

b) the composition of a company’s board shall be deemed to be controlled by another company if that other company by exercise of power exercisable by it at its discretion can appoint or remove all or a majority of the directors;

c) the expression “company” includes any body corporate;

d) layer” in relation to a holding company means its subsidiary or subsidiaries.

13. **Turnover**

“turnover” means the aggregate value of sale, supply or distribution of goods or on account of services rendered, or both, net of discounts, if any, held by the company during a financial year.
KEY CHANGES AND NEW CONCEPTS

1. **Jurisdiction of Court**  
   **Section 5**

   Earlier, Federal Government might empower any civil Court to exercise power of High Court. Now this provision is explicitly eliminated vide section 5(2) by which no civil court or any other court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Court is empowered to determine by or under this Ordinance.

   There shall be, in each High Court, one or more benches on permanent basis, each to be known as the Company Bench and all existing benches established under the repealed Ordinance shall continue to function.

   In addition, a new “Registrar of the Company Bench” shall also be established.

   The registrar of the company bench shall perform all the function assigned under the Ordinance and all ministerial and administrative of the Company bench. The court may refer to the registrar of the Company bench for recording of cross examination who shall complete the examination within thirty days of the order.

   The registrar of the company bench shall have the power of the civil court for the purpose of summoning of deponents and cross examination. **Section 6(10)(iii)**

2. **Procedure of the Court**  
   **Section 6**

   Any petition or application to court shall be submitted to the Registrar of the Company bench. The detailed contents and procedure of filing application is defined in section 6 (2).

   The time period of deciding any petition is extended from 90 days to 120 days.

   The Court shall treat affidavits, counter affidavits and other documents filed by the parties to the proceedings as evidence and decide the matter on the basis of the documents and affidavits placed before the Court, in a summary manner and pass final orders within the time stipulated. **Section 6 (9)**

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

   Any person aggrieved by any judgment or final order of the Court passed in its original jurisdiction may file an appeal to the Supreme Court of Pakistan within sixty days.

   The provision of Qanun-e-Shahadat, 1984 and the Code of Civil procedure, 1908 shall not apply to the proceedings except to such extent as the Court may determine its direction.

3. **Prohibition of certain names**  
   **Section 10**

   Commission may restrict the use of any word in the name of company as may be notified. In addition Registrar may reject the name of company if it is identical or resemble with a company or inappropriate, undesirable, deceptive, exploit religious susceptibilities or any other ground as may be specified.

   A name of the company shall be deemed deceptive if it does not commensurate with its principal line of business.
Two new items are added to the list of words / circumstances which requires prior Commission approval namely establish modarba management company or to float a modarba or any other business requiring license from the Commission.

A person may make an application to the registrar for reservation of name for a period of not exceeding 60 days.

The time period for rectification of name with the approval of registrar is reduced from 30 days to 21 days.

The companies are required to mention their old name with new names for a period of 3 months only.

4. **Registration of Memorandum and Articles of Association**  
   **Section 16**

All the requirements related to the memorandum, article of association and certificate of incorporation are combined in the section.

All money payable by a subscriber in pursuance of undertaking in the memorandum of association against the share subscribed shall be payable in cash within 30 days from the date of incorporation of the company. The same shall be informed to the registrar within 45 days from the date if incorporation accompanied by a certificate by a practicing Chartered Accountant or Cost and Management Accountant verifying the receipt of money so subscribed.

5. **Concept of principal line of business**  
   **Section 26 & 27**

“principal line of business” means the business in which substantial assets are held or substantial revenue is earned by a company, whichever is higher.

Existing companies shall continue with their existing memorandum of association and the object stated at serial number 1 of the object clause shall be treated as the principal line of business. If the object stated at serial number 1 of the object clause is not the principal line of business of the company, it shall be required to intimate to the registrar their principal line of business within such time from the commencement of this Ordinance and in the form as may be specified.

6. **Service of documents**  
   **Section 53 to 55**

Documents and information may be served to the Commission, company, or to members through electronic means.

7. **Restriction on transfer of shares by the members of a private company**  
   **Section 76**

In case of private companies, under this Ordinance, it has become mandatory to the seller of shares to first offer these shares to the existing members in proportion of their shareholding through the board of directors of the company. The seller shall only be able to sell to any other person if the existing members refuse to accept the offer or to the extent the existing members do not exercise their right. The pricing of the offer shall be subject to the rules to be formulated by the commission in this respect.

8. **Transfer to nominee of a deceased member**  
   **Section 79**

The new law provides for the role of nominee of a shareholder in case of his death. He will act as trustee and shall be responsible to transfer the shares to the
legal heirs under the Islamic law of inheritance and in case of a non-Muslim members, as per their respective law.

In the past, a member could nominate a person in whose name shares were to be transferred on the death of the member. It has now been required that such nominee in whose name shares shall be transferred at death of the member shall be trustee of these shares as to facilitate the transfer of shares to the legal heirs of the deceased in accordance with the applicable personal law. Also, if the deceased was a director of the company (in case of unlisted companies), the nominee acquiring the shares as trustee shall act as director of the company to protect the interest of the legal heirs.

9. **Power to issue shares at a discount**  
   Section 82

When issuing shares at a discount, Commission’s approval is not required in case of listed companies where discount is up to 10% of the face value and 90 days closing volume weighted price remained below the proposed issue price.

10. **Further issue of capital**  
    Section 83

The commission has been empowered to prescribe procedures and terms and conditions of “Employees Stock Option Scheme”. Employees Stock Option Scheme has been defined through which shares of holding company or subsidiary company are eligible to form part of the Scheme.

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

This section now also allows to issue shares either for cash or for any other consideration on the basis of a special resolution provided approval from Commission is obtained.

Earlier permission of Federal Government for issue without right shares was required which is now removed. This means that now issue of right shares is mandatory.

11. **Directors and the Board**  
   Section 153

- A person not holding National Tax Number (NTN) is not eligible to become director of a company.

(Subsequently SECP has granted exemption for a period of two years to all Small Size Companies and Agriculture Promotion Companies from the requirements of NTN as applicable in Section 153(h) of the new Ordinance)

- No person shall hold the office of director in more than seven listed companies including an alternate director.

- Any casual vacancy on the board of a listed company shall be filled up by the directors at the earliest but not later than ninety days from the date, the vacancy occurred.

- The Commission may provide for framework to ensure good corporate governance practices, compliance and matters incidental and auxiliary for companies or class of companies in a manner as may be specified.
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Section 160
- The voting power is reduced to 10% in order to apply to court to render the election of directors invalid.

Section 162
- A member having acquired, after the election of directors, the requisite shareholding may require the company to hold fresh election of directors of unlisted company. The Board shall proceed to hold fresh election within one month of the request.

Section 164
- Body corporate or corporation owned or controlled by Federal or Provincial Government may nominate directors, in addition to elected directors, on the board of a company to which such body Corporate or Corporation has extended credit facility.

Section 166
- Independent director shall be selected from a data bank (containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors) The data bank will be maintained by an institute, body or association as notified by the Commission. The responsibility of exercising due diligence before selecting a person from the data bank shall lie with the company. No person shall be selected for data bank without his consent in writing.

Section 172
- A new section is inserted whereby the Commission has power to disqualify any director to hold office in any public interest company for a period up to five years beginning from the date of order.

Section 174
- A person is personally responsible for all the relevant debts of company, if he is involved in the management of the public interest company in contravention of disqualification order.

Section 176
- Directors attending board meeting through video conferencing or by other audio visual means shall also be counted for the purposes of quorum. However, if there are not enough directors to form a quorum to fill a casual vacancy, all the remaining directors shall be deemed to constitute a quorum for this limited purpose.

Section 181
- A new section is inserted whereby an independent director and executive director shall 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.

Section 182
- Relaxation on giving loan by a public company (or a subsidiary of a public company) to certain organizations introduced. A company shall not make a loan to a director of the company or its holding company; or to any of his relatives; 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, unless the transaction has been approved by a resolution of the members of the company. Provided that in case of a listed company, approval of the Commission shall also be required before sanctioning of any such loan.

Section 183
- The powers of the Board which can be exercised by means of resolution passed at their meeting have been extended to include takeover of a company or acquire a controlling or substantial stake in another company. In addition terms ‘sizeable part’ and ‘undertaking’ is also defined under the section.

Section 192
- Provision of Code of Corporate Governance related to chief executive is now part of the Ordinance. Chairman of a
list company should be a non-executive
director and chief executive and chairman
shall not be same person.

- A section related to roles and
responsibilities of the directors is
introduced enumerating details such as
director has to act in accordance with
the articles of the company, act in good
faith and discharge his duties with due
reasonable care, not involved in a situation
which he may have direct or indirect
interest, not achieve any undue advantage
and not to assign his office.

- The definition of director’s relative
including step children for the purpose of
disclosing his interest in any transaction.

12. **Related Party Transaction**

A new Section has been introduced,
whereby a company may enter into any
contract or arrangement with a related
party only in accordance with the policy
approved by the board, subject to such
conditions as may be specified, with
respect to:

(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.

In case of the majority of directors to be
interested in any of the above
transactions, the matter shall be placed
before the general meeting for approval as
a special resolution.

This section is not applicable in respect of
any transactions entered into by the
company in its ordinary course of business
on an arm’s length basis.

The expression ‘related party’ has been
defined to include:

- a director or his relative;

- a key managerial personnel or his
relative;

- a firm, in which a director, manager or
his relative is a partner;

- a private company in which a director or
a manager is a member or director;

- a public company in which a director or
manager is a director or holds along
with his relatives, any shares of its paid
up share capital;

- any body corporate whose Board, chief
executive or manager is accustomed to
act in accordance with the advice,
directions or instructions of a director
or manager (other than given in a
professional capacity);

- any person on whose advice, directions
or instructions (other than given in a
professional capacity) a director or a
manager is accustomed to act;

- any company which is a holding,
subsidiary or an associated company of
such company to which it is also a
subsidiary;

- such other person as may be specified
by the SECP.
For the purpose of this section “relative” means spouse, siblings and lineal ascendants and descendants of a person.

The commission may specify the record to be maintained by the company with regards to transactions undertaken with the related party.

Where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the board or approval by a special resolution in the general meeting and if it is not ratified by the board or, as the case may be, by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into, such contract or arrangement shall be voidable at the option of the board and if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it.

It shall be open to the company to proceed against a director or any other employee who had entered into such contract or arrangement in contravention of the provisions of this section for recovery of any loss sustained by it as a result of such contract or arrangement.

Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall be liable to:

- in case of listed company, be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than five million rupees, or both; and
- in case of any other company, to a penalty of level 2 on the standard scale.

13. Financial Statements

The Ordinance has aligned the definition of “Financial Statements” as defined in IFRS.

Under this Ordinance, the first financial statements of the Company must be laid in the AGM within a period not later than 16 months from the date of incorporation. Previously the requirement was 18 months. However, there is no change in the period of subsequent periods financial statements.

Further, this Ordinance has given exemption from audit requirements for private companies having paid up capital not exceeding Rs.1 million. Previously audit was mandatory for all companies.

In the case of a listed company, there is an additional requirement of Chairman’s review report.

14. Classification of Companies

The companies may be classified in such categories as may be specified in the Third Schedule for the purpose of preparing the Financial Statements.

15. Contents of Financial Statements

The financial statements shall give a true and fair view of the state of affairs of the company, comply with the financial reporting standards notified by the Commission and shall be prepared in accordance with the requirements contained in the Third Schedule for different class or classes of companies.
Further, the Commission has been given power to grant exemption to any company or any class of companies if it is in the public interest so to do, from compliance with all or any of the requirements of the relevant Schedule.

The Companies are now allowed to make unreserved compliance with IFRS issued by IASB for financial statements.

16. Duty to prepare directors’ report and statement of compliance Section 226

The requirement to prepare directors’ report for a private company having paid up capital not exceeding Rupees 3 million has been removed.

The Commission may by general or special order, direct such class or classes of companies to prepare a statement of compliance.

17. Contents of directors’ report and statement of compliance Section 227

The directors report shall now also include:

- fair review of a company’s business; and

- matter of adequacy of internal financial controls

The directors’ report is now to be signed by the CEO and a director of the company. Previously it was either Chairman or CEO.

18. Consolidated financial statements Section 228

The requirement to prepare consolidated financial statements for holding companies has been retained in this Ordinance, however, in respect of a private company and its subsidiary, where neither the holding company nor the subsidiary has paid up capital not exceeding one million rupees, the consolidated financial statements are not required.

19. Financial year of holding company and subsidiary Section 229

The financial year for the parent and its subsidiaries should be same unless where there are good reasons against it. However, the Commission may, on application of a holding company or a subsidiary of the holding company, extend the financial year.

Under the repealed Ordinance, all interim financial statements of a subsidiary prepared for consolidation purposes where there was different financial year of holding company and subsidiaries were to be reviewed by the auditors of the subsidiaries has been deleted.

20. Approval and authentication of Financial Statements Section 232

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

21. Copy of Financial Statements to be forwarded to the registrar Section 233

The requirement to file financial statements with the registrar for private companies having paid up capital to Rs.7.5 million has been increased to Rs.10 million.

22. Filing of unaudited financial statements Section 234

Private companies having paid up capital up to Rs.1 million are required to file whether audited or unaudited financial statements within 30 days of such meeting.
23. **Treatment of surplus arising out of revaluation of fixed assets**  

Section related to surplus on revaluation of fixed assets has been deleted in this Ordinance. Therefore, relevant accounting treatment as per the applicable accounting standards to be now followed. The new fourth and fifth schedules require disclosure of the surplus as separate line item on the face of the financial statements.

24. **Dividends to be paid only out of profits**  

A new provision has been added whereby any dividend may be paid by a company either in cash or in kind only out of profits. ‘Explanation’ the payment of dividend in kind shall only be in the shape of shares of listed company held by the distributing company.

(Subsequently the payment of cash dividend through electronic mode by listed companies has been kept in abeyance till 31 March 2017 by the SECP)

25. **Unclaimed shares, modaraba certificates and dividend to vest with Federal Government**  

An overriding provision has been introduced to specify that unclaimed shares, modaraba certificates and dividend to vest with Federal Government. The section states that:

- where shares of a company or modaraba certificates of a modaraba have been issued; or
- where dividend has been declared by a company or modaraba;

which remain unclaimed or unpaid for a period of three years from the date it is due and payable, or

- any other instrument or amount which remain unclaimed or unpaid, having such nature and for such period as may be specified;

the company shall give three months notices to the shareholders or certificate holders or the owner, as the case may be, to file claim, in the following manner;

- by a registered post acknowledgement due on his last known address; and
- after expiry of notice period, final notice in the specified form shall be published in two daily newspapers of which one will be in Urdu and one in English having wide circulation.

The unclaimed or unpaid amount, shall be maintained in a profit bearing account with the State Bank of Pakistan or National Bank of Pakistan to be called ‘Companies Unclaimed Instruments and Dividend and Insurance Benefits and Investors Education Account’ as may be notified by the Federal Government and shall be deemed to be part of public accounts and interest/profit accumulated thereon shall be credited on quarterly basis to the Fund.

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

26. **Establishment of Investor Education and Awareness Fund**  

An Investor Education and Awareness Fund (the Fund) to be managed and controlled by the Commission as may be prescribed through rules has been created.
The Fund shall be credited with:

- the interest/profit earned on the “Companies Unclaimed Instruments and Dividend and Insurance Benefits and Investors Education Account”;

- forfeited amounts under sub-section (7) of section 87 of the Securities Act, 2015;

- grants or donations given by the Federal Government, Provincial Governments, companies, or any other institution or person for the purposes of the Fund;

- the interest or other income received out of the investments made from the Fund;

- the amount realised in terms of fourth proviso of section 341 or fourth proviso of sub-section (4) of section 372; and

- such other amounts as may be prescribed.

The Fund shall be utilized for:

- promotion of investor education and awareness in such a manner as may be prescribed;

- educational activities including seminars, training, research and publications aimed at investors;

- awareness programs through media, print, electronic, social media, aimed at investors;

- funding investor education and awareness activities approved by the Commission; and

- to meet the administrative expenses of the Fund.

The accounts of the Fund shall be audited by auditors appointed by the Commission who shall be a firm of chartered accountants. The Commission shall ensure maintenance of proper and separate accounts and other relevant records in relation to the Fund giving therein details of all receipts to, and expenditure from, the Fund and other relevant particulars. The Commission may invest the moneys of the Fund in such manner as set out in section 20 of the Trusts Act, 1882 (II of 1882).

27. **Appointment, removal and fee of auditors**

**Section 246**

Under this Ordinance, period within which first auditor of a company shall be appointed by the Board is increased from 60 days to 3 months of the date of incorporation of the company.

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

The remuneration of auditors’ to be fixed by the company in the general meeting or the Board or Commission if the auditors’ are appointed by the Board or Commission as the case may be. Previously the general meeting could also fix the remuneration of the auditors’ in such manner as the
general meeting may determine. This has been removed in this Ordinance.

28. Qualification and disqualification of auditors

Under this Ordinance, audit in case of a public company or a private company which a subsidiary of a public company or a private company having paid up capital of three million rupees or more, the auditors must be a chartered accountant having valid certificate of practice from the Institute of Chartered Accountants. However, companies having paid up capital of less than three million can appoint a chartered accountant or cost and management accountant having valid certificate of practice from the respective institute or a firm of chartered accountants or cost and management accountants.

Further, with regard to the disqualification of auditors, a new phrase ‘other than in the ordinary course of business of such entities’ has been introduced for following situations:

- A person who is indebted to the company;
- A person who has given guarantee; and
- A person or firm has direct or indirect business relationship with the company.

New disqualifications include the following:

- A body corporate;
- A person who has been convicted by court of an offence involving fraud; and
- A person who is not eligible to act as auditor under the code of ethics as adopted by ICAP or ICMAP.

29. Auditors’ right to information

Section 248

Under this Ordinance, additional rights have been given to the auditors to obtain information from employees of the company as well as from the subsidiary companies and its employees. Previously it was covered as powers of the auditors.

Level 3 penalty introduced in the new Ordinance for any non-compliance which includes providing false or incorrect information to the auditor.

30. Duties of Auditor

Section 249

The Auditor is required to file his consent to act as auditor given to the company of the company with the registrar within 14 days of his appointment.

Further, this Ordinance has specifically included the provision in relation to auditors’ report to be in compliance with the requirements of International Standards on Auditing (ISAs) as adopted by the Institute of Chartered Accountant of Pakistan. (New forms in this regard are being finalized by the Commission)

Furthermore, certain modifications have been made in the auditors’ report and it is now required to include opinion in respect of whether investments made, expenditure incurred and guarantees extended, during the year, were for the purpose of company’s business. Previously this was only to the extent of expenditure. The requirement to include opinion in respect of whether the business conducted, investments made and expenditure incurred during the year were in accordance with the objects of the company has been deleted.

The Ordinance included a provision that empowers the Commission to direct by general or special order such class or
classes of companies to prepare a statement of compliance as contained section 227 of this Ordinance. The board of directors shall make out and attach to the financial statements such statement of compliance as may be specified. The contents of the statement of compliance have not yet been prescribed. The statement of compliance shall be subject to review of the auditor of the company.

31. **Audit of Cost Accounts**  
Section 250

Under this Ordinance, cost audit is not mandatory unless otherwise directed by the Commission to conduct the cost audit.

32. **Signature of auditor’s report**  
Section 251

The auditor’s report must state the name of the auditor, engagement partner, be signed, dated and indicate the place at which it is signed.

33. **Seizure of documents by registrar, inspector or investigation officer**  
Section 255

The power of Commission is extended with reference to seizure of documents and enter into any place for the purpose of searching. Now the registrar, inspector or investigation officer with the prior approval of one Commissioner may enter into any such place without warrants 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.

34. **Serious Fraud Investigation**  
Section 258

A new section is added in the Ordinance to initiate investigation proceedings where the Commission is of the opinion that any fraud or activity is undertaken by a company having serious implications. The Commission may authorize any one or more of its officers or appoint such number of professionals from amongst the persons of ability, integrity and having experience in the fields of corporate affairs, accountancy, taxation, forensic audit, capital market, banking, information technology, law or such other fields as may be notified, as an inspector or investigation officer to investigate such serious nature of offences relating to a company as provided in Sixth Schedule.

The persons appointed as inspectors or investigation officer under sub-section (1) shall have all powers of investigation officer under this Ordinance, the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997) and Code of Criminal Procedure, 1898 (Act V of 1898), mutatis mutandis and shall report in such manner as the Commission may direct.

The Commission may, if it is satisfied that a matter is of public importance or it is in the interest of public at large, request the concerned Minister-in-Charge of the Federal Government to form a Joint Investigation Team to be headed by a senior level officer of the Commission and may include Gazetted officer of any Federal law enforcement agency, bureau or authority for providing assistance in investigating the offence under this section and the direction of the Minister-in-Charge of the Federal Government under this section shall be binding.

Upon completion of investigation, the Joint Investigation Team shall, through the Special Public Prosecutor, submit a report before the Court
35. **Compromise with creditors and members**  
Sections 279

Jurisdiction to approve compromises, arrangements, reconstruction and amalgamation has been shifted from the Court to the Commission.

Filling requirements of order by the company has been eliminated and the responsibility has been given to the order issuing authority.

36. **Powers of Commission to enforce compromises and arrangements**  
Section 280

Where the Commission makes an order under section 279 sanctioning a compromise or an arrangement in respect of a company, it may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.

If the Commission is satisfied that a compromise or arrangement sanctioned under section 279 cannot be worked satisfactorily with or without modification, it may, initiate proceedings for the winding up of the company.

37. **Powers of Commission to facilitate reconstruction or amalgamation of companies**  
Section 282

Considering the expertise of Commission and the time ordinarily taken in the cases of amalgamations by the Court, the jurisdiction with respect to amalgamations has been shifted to the Commission for swift disposal of the matters.

Where an order has been made by the Commission, merging companies or the company in respect of which a division is proposed, shall also be required to circulate the following for the meeting so ordered by the Commission, namely:

- the draft of the proposed terms of the scheme drawn up and adopted by the board of each of the applicant companies;
- confirmation that a copy of the draft scheme has been filed with the registrar;
- 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;
- the report of the expert with regard to valuation, if any;
- a supplementary accounting statement if the last annual accounts of any of the applicant company relate to a financial year ending more than six months before the first meeting of the company summoned for the purposes of approving the scheme.

38. **Amalgamation of wholly owned subsidiaries in holding company**  
Section 284

A company and one or more other companies that is or that are directly or indirectly wholly owned by it may amalgamate and continue as one company without complying with sections 279 to 282, if:

- the scheme of amalgamation is approved by the board of each amalgamating company; and
- each resolution provides that:
  i. the shares of each transferor company, other than the
transferee company, will be cancelled without payment or other consideration; and

ii. the board is satisfied that the transferee company will be able to pay its debts as they fall due during the period of twelve months immediately after the date on which the amalgamation is to become effective and a declaration verified by an affidavit to the effect will be filed with the registrar; and

iii. the person or persons named in the resolution will be the director or directors of the transferee company.

39. Application to Court  
Section 286

Under this Ordinance, the right to apply to the Commission has now also been given to the shareholders of the Company in addition to the creditors with the same threshold as for the creditors.

40. Management by Administrator  
Section 291

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

41. Inactive Companies  
Section 424

A new concept has been added whereby a company, other than a listed company, is formed for a future project or to hold an asset or intellectual property and has no significant accounting transaction, 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.

‘Explanation’ – ‘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.

‘Significant accounting transaction’ means any transaction other than:
- payments made by it to fulfill the requirements of this Ordinance or any other law;
- allotment of shares to fulfill the requirements of this Ordinance; and
- payment for maintenance of its office and records.

The registrar after considering the application shall allow the status of inactive company to the applicant and issue a certificate in such form as may be specified to that effect. The registrar shall also maintain a register of inactive companies in such form as may be specified.

In case of a company which has not filed financial statements or annual returns for two financial years consecutively, the registrar shall issue a notice to that company and enter the name of such company in the register maintained for inactive companies.

An inactive company shall be required to have lesser filings and procedural requirements, to be prescribed by the Commission.
42. **Easy exit of a defunct company**  
Section 426

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 on payment of such fee as prescribed in Seventh Schedule of the Ordinance.

43. **Power of the Commission to require information of beneficial owners of a foreign company**  
Section 439

Under this section, the Commission may at any time by a written notice, call upon the foreign company and any of its present or past directors, officers or auditors or a person who is directly or indirectly the beneficial owner of its equity securities to furnish the information about the shareholding in the company at any point in time and such other information and document as may be directed.

44. **Certification of Shariah compliant companies and Shariah compliant securities**  
Section 451

In order to promote the Islamic finance in the country, the concept of Shariah model business for companies has been provided in the new law along with the certification of Shariah compliant securities. No company shall be called a Shariah compliant company unless it is conducting its business according to the principles of Shariah and has obtained a certificate of Shariah compliance from the Commission.

No security shall be called a Shariah compliant security unless the proceeds from the security are utilized for Shariah permissible business and it has obtained a certificate of Shariah compliance from the Commission.

45. **Companies Global Register of Beneficial Ownership**  
Section 452

Every substantial shareholder or officer of a company incorporated under the Ordinance, having 10% or more shares in a foreign company or a body corporate are required to inform the company regarding beneficial ownership or any other interest or percentage as may be notified by the Commission.

Company shall file the same with the Commission through annual return.

Concept of beneficial ownership and substantial shareholder have been defined in the Ordinance.

46. **Prevention of offences relating to fraud, money laundering and terrorist financing**  
Section 453

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 with respect to affairs of the company and shall take adequate measures for the purpose.

In case of failure to comply with the provisions of this section, such person(s) shall be liable to punishment of imprisonment for a term which may extend to three years and with fine which may extend to one hundred million rupees.

47. **Free Zone Company**  
Section 454

The concept of Free Zone Company has been introduced in the new law whereby a company incorporated for the purpose of carrying on business in the export processing zone or an area notified by the concerned Minister-in-Charge of the Federal Government as free zone shall be eligible to such exemptions from the
requirements of this Ordinance as may be notified in terms of section 459.

The Commission may, for the protection of foreign investors and to secure foreign investment, restrict the disclosure of information maintained by the registrar regarding promoters, shareholders and directors of the company who are foreign nationals unless such disclosure of information is authorized by the company in writing.

Such company will be dispensed with the words “Private Limited” or “Limited” as the case may be, and called as the “Free Zone Company” having the parenthesis and alphabets “FZC” at the end of its name.

48. Acceptance of advance by real estate companies

Companies are now restricted to engage in the business of real estate project unless its principal line of business is development of real estate projects

A company undertaking a real estate project shall at all times comply with the following terms and conditions, namely:

- a real estate company shall not:
  
  i. announce any real estate project;
  
  ii. make any publication or advertisement of real estate projects; and
  
  iii. accept any advances or deposits in any form whatsoever against any booking to sell, or offer for sale, or invite persons to purchase any land, apartment or building, as the case may be, in any real estate project or part of it;

  unless it has obtained approval of the Commission and all other necessary approvals.

  - it shall not accept a sum against purchase of the apartment, plot, or building, as the case may be, as an advance payment from a person without first entering into a written agreement for sale with such person except nominal fee for application;

  - it shall maintain and preserve such books of account, records and documents in the manner as may be specified;

  - it shall deposit any sum obtained from the allottees, from time to time, in a separate escrow account opened in the name of the project as may be specified;

  - it shall comply with any directions notified by the Commission and accounting framework as may be notified; and

  - any other term and condition as may be specified.

Minister-in-Charge of the Federal Government has been empowered to exempt such companies from any provisions which relate to the legislative competence of the Parliament.

49. Agriculture Promotion Companies

An enabling provision has been added to facilitate the agricultural sector. Any person, having its principle line of business related to produce for agriculture promotion or managing produce as collateral or engaged in any activity connected with or related to any produce or other related activities may establish
Agriculture Promotion Company. Such company shall be formed by the farmers and in any of the two classes of companies namely; (i) Producer Company and (ii) Collateral Management company. The Producer company shall primarily, deal with the produce of its members. Certain exemptions shall be available to such companies. The Collateral Management Company shall be engaged in the activity of managing produce as collateral, including warehousing and facilitation of commodity financing. The detail shall be provided through regulations.

Minister-in-Charge of the Federal Government has been empowered to exempt such companies from any provisions which relate to the legislative competence of the Parliament.

50. Valuation by registered valuers Section 460

Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Ordinance, 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.

The valuer appointed shall:

- make an impartial, true and fair valuation of any assets which may be required to be valued;
- exercise due diligence while performing the functions as valuer; and
- not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time before submission of the report.

Valuer will be required to prepare report in such manner and by applying such approaches as may be prescribed.

If the valuer contravenes the provisions of this section or the regulations made thereunder, the valuer shall be liable to a penalty of level 2 (see paragraph 54) on the standard scale. However, if the valuer has contravened such provisions with the intention to defraud the company, its members or creditors, he shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to five hundred thousand rupees. He shall also be liable to refund the remuneration received from the company; and pay for the damages to the company and to any person for loss arising out of incorrect or misleading statements made in the report.

51. Security and Clearance of Shareholders and Directors Section 461

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

52. Approval of transfer of shares by the agents licenced by the Commission Section 467

Under this Ordinance, companies to be notified for the purpose, before making any application for registration of the transfer of shares to the board of directors of the company, the transferor and the transferee shall appear before the agent licenced by the Commission under this section; who shall record the statement of both the parties and forward a certified copy of the statement so recorded to the
company for further necessary action in such form and manner and subject to such conditions as may be specified.

The aforesaid provision of the section shall not apply to transfer or transmission of shares by operation of law.  

The supply of documents, information and notices to the members shall only be provided electronically on the email address provided by the members after the date as may be notified by the Commission.

53. **Offences to be cognizable**  

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

54. **Adjudication of offences and standard scale of penalty**  

Standard scale of penalty for offences has been introduced replacing the amount of fine the end of each section / provision.

<table>
<thead>
<tr>
<th>Level</th>
<th>Limit of penalty</th>
<th>Per day penalty during which default continues</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Upto Rs. 25,000</td>
<td>Upto Rs. 500</td>
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<tr>
<td>2</td>
<td>Upto Rs. 500,000</td>
<td>Upto Rs. 1,000</td>
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<tr>
<td>3</td>
<td>Upto Rs. 100 million</td>
<td>Upto Rs. 500,000</td>
</tr>
</tbody>
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55. **Power to alter schedules**  

A new concept of “Minister-In-Charge” has been introduced whereby “Minister-In-Charge” of the Federal Government authorized to alter or add to any extent in the Sixth and Eighth Schedules to the Companies Ordinance, 2016. Similarly, the Commission is now authorized to alter or add to any of the tables, regulations, requirements, forms and other provisions contained in any other schedules, except for sixth and eighth schedules of the Ordinance. Previously only Federal Government was authorized to alter or add to any extent in the repealed Ordinance 1984 including all Schedules attached therewith.

56. **Repeal and savings**  

The Companies Ordinance, 1984, hereinafter referred as repealed Ordinance, shall stand repealed, except Part VIIIA consisting of sections 282A to 282N from the date of coming into force of this Ordinance (11 November 2016 by the Presidential Order) and the provisions of the said Part VIIIA along with all related or connected provisions of the repealed Ordinance shall be applicable mutatis mutandis to Non-banking Finance Companies in a manner as if the repealed Ordinance has not been repealed.

After the commencement of this Ordinance, all rules, regulations, notification, guideline, circular, directive, order (special or general) or exemption issued, made or granted under the Companies Ordinance, 1984 shall have effect as if they had been issued, made or granted under the corresponding provision of this Ordinance.
57. Validation of laws  
Section 514

All amendments made to the Companies Ordinance, 1984 or any administered legislation through various Finance Acts shall be deemed to have been validly made from the date of commencement of such Acts.

58. Salient features of the THIRD SCHEDULE to the Companies Ordinance, 2016

The third schedule to this Ordinance provides classification criteria of companies, the applicable accounting framework and also specifies which companies are required to follow requirements of fourth and fifth schedule to the Ordinance. The requirements are largely in line with the repealed Companies Ordinance, 1984 and SECP S.R.O 929/2015. However, there are few requirements which differ from the repealed Ordinance.

The companies have been mainly classified as follows:

- Public Interest Company & Large Sized Company (PILSC)
- Medium Sized Company (MSC)
- Small Sized Company (SSC)

These classification have been made mainly based on the turnover, paid up capital and number of employees of the respective company.

59. Key changes in the FOURTH SCHEDULE to the Companies Ordinance, 2016

The key changes in the fourth schedule are as follows:

- Duplication in disclosures already covered in IFRS has been eliminated.
- Various Circulars on disclosures have now been incorporated in the Schedule;
- Executive criteria of annual salary has been increased from Rs.500,000/- to Rs.1,200,000/-;
- New disclosure added for general information of the following:
  - Geographical location and address of mill/plant units;
  - Particulars of immovable assets including location and area of land; and
  - Number of employees separately disclosing factory employees.
- Summary of significant transactions and events affecting the performance and financial performance of the Company;
- Disclosure of plans for proceeds obtained through shares issue or debt instruments;
- Additional disclosures for foreign companies and foreign shareholders have been introduced;
- Certain additional disclosures for export sales have been introduced;
- Certain disclosures for Shariah compliant companies have been introduced;
- Disclosure of property or asset acquired by company but nor held in the name of company or not in possession or control of the company;
- Forced Sale Value to be disclosed in case of revaluation of property, plant and equipment;
- Details of disposal of asset to be given in case of book value exceeding Rs.500,000/-, previously it was Rs.50,000/-;

- Loans and advances to other than suppliers exceeding Rs.1 million to disclose name of borrower, terms of repayment and particulars of collateral;

- In case of loans or advances obtained/provided at terms other than arm’s length, reasons to be disclosed;

- Certain additional disclosures relating to share capital has been introduced;

- Disclosure of security deposit payable along with particulars of amount received against goods/services to be delivered and amount utilizable by the company and amount kept in separate bank account.

60. **Key changes in the FIFTH SCHEDULE to the Companies Ordinance, 2016**

The key changes in the fifth schedule are same as that in the fourth schedule except for the following:

- No change in the Executive criteria of annual salary;

- No disclosure of significant transactions and events affecting the performance and financial performance of the Company;

- No disclosure of plans for proceeds obtained through shares issue;

- No additional disclosures required for export sales;
- No disclosure required for Shariah compliant companies;

- No disclosure required for property or asset acquired by the company but not held in the name of the company or not in possession or control of the company;

- No disclosure for forced sale value required in case of revaluation of property, plant and equipment;
- No disclosure required for Loans and Advances to other than suppliers exceeding Rs.1 million.
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