



Ease of doing business Under Companies Ordinance, 2016

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New Company Law - Reform Objectives

- Facilitation to the corporate sector and other stakeholders
- Strengthen regulatory frame work
- Introduce maximum use of technology
- Protection of the interests of shareholders
- Abolish unnecessary requirements
- Introduce appropriate terminologies
- Remove the defects in the existing law
- Softer regime for the companies having no stake of the general public
- Introduce new concepts adopted by different jurisdictions
- Steps towards paperless environment in SECP
- Facilitation to and regulation of PSCs
- Protection of interest of creditors



New Company Law – Salient Features

Salient Features of New Company Law from Ease of Doing Business Perspective



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Name of Company:

- Reservation of a name for **60** days
- Use of word “**modaraba**” and any other words which is permissible for any other special business requiring license from SECP like **NBFC’s**, **stock brokerage** shall not be allowed by the registrar without prior approval of the Commission. The companies having or using such names shall be compelled to change the name suitably
- Restriction on the use of any word as may be notified through notification
- Cancellation of name if obtained on the basis of misstatement or concealment of fact
- Power of the Registrar to change the name suo-moto in case of non-compliance of direction to change the name



Incorporation of Company:

- Simple one page memorandum
- All lawful businesses allowed except the prohibited / restricted businesses
- Only principal line of business to be mentioned:
“Principal line of business” means the business in which substantial assets are held by a company.
- The existing companies shall report the Principal line of business through a simple form – no amendment in the memorandum
- Payment of subscription amount within 15 days to the company
- Certification of receipt of money by the auditor

**Impact: Reduce the cost of starting a business
Reduce hassle**



Alteration in Memorandum:

- Since all the lawful (except restricted) objects shall be deemed to be part of object clause, no need to alter the memorandum
- Alteration would be required only on conversion of a normal company into a specialized company.
- The requirement of filing certified copy of the order by the company abolished

Impact: Reduction in cost of **doing business**



Maximum use of Technology:

By the regulator, regulatee, shareholders as well as the stakeholders in all the areas particularly.-

- Service of documents/notices to the members, registrar and the Commission;
- Participation in the meetings by members and directors through video links;
- Voting through electronic means;
- Enabling provision empowering the Commission to notify mandatory on-line filing
- Enabling provision empowering the Commission to notify mandatory service of documents by the company on the members electronically – after a specified date the member requiring physical document shall bear the cost

Impact: Reduction in cost of doing business and efficient service / delivery



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Services of E-Intermediary:

- For the companies not having computer / IT infrastructure
- e-intermediaries shall be licenced by the Commission

Impact: Promote electronic filing



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Registration of Charges:

- Time frame for registration of charge has been increased from 21 to 30 days
- **Pledge** also registerable

Impact: Disclosure for prospective creditors/investors

- The procedure for satisfaction of charge simplified. If the mortgagee confirms repayment of loan and issues NOC to that effect, condonation of delay through a petition shall not be required

Impact: Reduction in cost of **doing business**



Appointment of Legal Adviser:

- Requirement to appoint legal adviser applicable on the company having paid up capital of Rs.7.5 million instead of Rs.500,000/-
- Punishment of fine as against the imprisonment in existing law
- The cognizance of the default may be taken by the Commission instead of filing prosecution

Impact: Reduction in cost of **doing business**
No harassment on the part of directors



Requirement to appoint Company Secretary:

- SMCs have been exempted from the requirement of appointing company secretary

Impact: Minimum regulatory requirements thus reducing cost of doing business

- All public companies shall be required to avail services of a permanent company secretary.

Impact: To ensure a unified mechanism.



Conversion of status of Companies:

- Enabling provision added for conversion of a:-
- limited company into unlimited company and vice versa;
- limited by guarantee into company limited by shares and vice versa.
- private company into SMC and vice versa;

Impact: Flexibility to convert from one status to another.



Transfer of Shares:

- Mandatory requirement by the seller to offer the shares to the existing members in case of private company

Impact: Further strengthen the original scheme to form a private company

- Role of nominee clarified. He will be the trustee and 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

Impact: Reduce disputes



Prohibition on invitation of deposits:

- No company shall be allowed to invite and accept any deposit
- “deposit” means any deposit of money with, and includes any amount borrowed by, a company, but shall not include a loan raised by issue of debentures or a loan obtained from a banking company or financial institution.

Impact: Avoid fraudulent activities and protect the interest of public at large



Meetings:

- Passing of members' resolution through circulation in case of unlisted companies

Impact: convenience in case of emergency

- Softer regime for SMC – no requirement of holding AGM, EOGM and election of directors

Impact: convenience and reduction in cost

- Voting through postal ballot and e-ballot allowed



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Impact: ensure maximum participation



Meetings:

- Requirement of seeking approval from Registrar for holding EOGM by unlisted companies at a shorter notice abolished

Impact: convenience and reduction in cost

- Facility for attending the meetings through video link allowed
- Arrangement of Video-link facility by listed company mandatory where 10% shareholders resides in a city, on request.

Impact: ensure maximum participation and reduce cost of the company



- **Conversion of directors loan into equity**
- Conversion of loans and redeemable securities into shares allowed.
- **Appointment of Additional Director in mid-term**
- **Before first AGM** – through general meeting
- **After the election** – the person holding sufficient shares to get him elected may require the fresh election.

Impact: Rights of strategic investor safeguarded.



Related Party Transactions

- New provision has been introduced whereby the term “related party” has been elaborately described and a mechanism provided to have a check and balance on related party transactions undertaken by the companies.

Classification of companies

- Different categories of companies have been prescribed for the purpose of Act pertaining to preparation and audit of financial statements:
 - **Small Sized Company (SSC)**
 - **Medium Sized Company (MSC)**
 - **Public Interest & Large Sized Company (PI&LSC)**



Directors Report

- Exemption to the small companies (paid-up upto 3 million)
- A listed company to provide additional information in the directors' report having impact on the future performance and on environment. And action taken for CSR etc.

Audit

- Exemptions of audit requirement for a company having capital up to Rs. 1 million.

Impact: Minimum requirements for reducing cost of small companies.

- The additional rights given to the auditors:
- requiring information from the employees of the company; and
- access to the accounts of subsidiary companies and its employees.



Auditors Report

- whether security has been obtained by the company in respect of loans and advances made by the company on the basis of security;
- Confirmation of the receipt of consideration for the shares allotted – to reduce disputes

Qualification of auditors

- Qualification prescribed for the companies having capital of less than Rs.3 million – CA and ICMA and enabling provision to prescribe other qualifications



Exemptions to certain companies

In order to attract small businesses to convert into a company, the companies falling under the following categories have been provided some exemptions:

Forms of Company	Exemptions
<p>Small Company A private company having paid-up capital not exceeding Rs. 1 million.</p>	<p>From:</p> <ol style="list-style-type: none"> Annual general meeting. Filing of annual returns unless there is a change in membership or directorship. Audit requirements. Preparation of directors' report. <p>However, such a company shall have to file the financial statements duly approved and signed by all the directors.</p>
<p>Single Member Company</p>	<p>From:</p> <ol style="list-style-type: none"> Annual general meeting. Filing of annual returns unless there is a change in membership or directorship.



Mediation

- Option to resolve disputes through mediation provided.
- The Commission has been empowered to maintain a panel of experts to be called the “mediation and conciliation panel”.
- Interested parties may before or after entering into a formal dispute resolution process either pending before the Commission; the Appellate Bench may approach the Mediation and Conciliation Panel.

Impact: Facilitating alternative dispute resolution for reducing cost of the companies.



Acceptance of documents presented after prescribed time

- New regime introduced to avoid the harassment of the companies. As a result of this provision the late fee paid shall be full and final liability with respect to delay in filing up to 2 years and no adjudication process shall be required

Impact: Companies shall be able to rectify overdue filings without any cumbersome process.



Easy exit of a defunct company

- Enabling provision added to provide a soft regime for the easy exit of a company which has ceased to operate and having no assets and liabilities

Inactive companies

- A company formed for a future project or to hold an asset or intellectual property; and has no significant accounting transaction, or
- an inactive company
- may apply for obtaining the status of a dormant company.

Impact: Minimum requirements for inactive companies reducing cost.



Amalgamation of Companies:

- Jurisdiction to allow merger, amalgamation and reconstruction of companies has been shifted from the Court to the Commission
- Board of Directors empowered to approve the amalgamation of:
 - subsidiaries of a holding company,
 - wholly owned subsidiaries into its holding company
- No approval of the Commission or the court would be required.

Impact: Early disposal, cost reduction



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Winding up:

- Additional grounds for winding up by court added;
- default by a company in filing its financial statements or annual returns for 2 financial years;
- company acting against the interests of Pakistan;
- conduct of business by a company in a manner oppressive to the minority members or persons concerned with the formation or promotion of the company;
- revocation of a license;
- raising unauthorized deposits from the general public,
- indulging in referral marketing, multi-level marketing (MLM), Pyramid and Ponzi Schemes, locally or internationally, directly or indirectly; or
- any other ground notified by the Commission.



Enabling provision for the:

“Panel of provisional manager and official liquidators” to be maintained by the Commission, consisting of individuals from disciplines including chartered accountancy, law, company secretary, cost and management accountancy and retired civil servant etc.

Valuation regime

Valuation of assets/services mandatory by the qualified valuer registered with the Commission for allotment of shares for consideration other than cash



Code of Corporate Governance –

- Enabling provision added to frame the Code.

Cap on directorships in listed companies

- Maximum seven listed companies

Maximum time frame for filing the vacancy in case of listed company

- 90 days



Shariah Compliant Company and Shariah Compliant Securities:

- "Shariah compliant company" means a company which is conducting its business according to the principles of Shariah.
- "Shariah compliant security" means a security structured on the basis of the principles of Shariah.
- Enabling provision added for certification by the Commission with the power to prescribe complete mechanism.



Agriculture Promotion Company

- An enabling provision added to facilitate the agriculture sector.
- It should be formed by the farmers.

Classification

- (i) Producer Company - to primarily, deal with the produce of its members
 - (ii) Collateral Management company – to engage in the activity of managing produce as collateral, including warehousing and facilitation of commodity financing.
- Detailed parameters for such companies shall be provided through regulations.
 - Exemptions from the applicability of different provisions of the Act to be notified.



Real Estate Company

- To regulate the matters relating to advances and deposit collected by such companies;
- Restriction on accepting any advances or monies in any form whatsoever, against any booking to sell or offer to sell unless the company has obtained necessary permission/approval/NOC from the concerned authority (CDA/LDA etc.);
- Written agreement with the customer mandatory before accepting any money against sale/purchase of any apartment, plot or building as an advance payment;
- Restriction on publication of advertisement of the services that are not intended to be offered;



Real Estate Company

- Restriction on advertisement for any real estate project without the approval of the Commission and NOC of the concerned authority;
- All the monies received from the allottees' shall be deposited in a separate ESCROW account to be opened in the name of the project;
- The ESCROW account shall be dedicated exclusively for carrying out the project;
- No encumbrance shall be imposed on the payment of such ESCROW account for the benefit of creditors of the company.



Companies' Global Register of Beneficial Ownership

- It is in the background of recent developments concerning offshore investments across the globe;
- The officers and shareholders of a local company shall report to the company their investments whether local or abroad;
- The company shall file the same with the Commission through annual return;
- All such information shall be recorded by the Commission in a register to be known as the “Companies’ Global Register of Beneficial Ownership”.



Free Zone Company (FZC) (S.454)

The information of foreigners in companies in EPZ and other free zones declared by the Federal Government shall not be publicly available;

Exceptions:

- tax authorities or
- under the order of the court or
- if any information or record is requirement to be provided under any international obligation or commitment to which the government is subjected.

It shall only be formed as a private limited company, whose name shall signify FZC at the end of its name.



Focus on improving Doing Business climate

➤ Key challenges

- Lack of investors awareness, access, participation, and confidence
- Limited outreach of financial/capital market institutions/products and mutual fund industry
- Low insurance sector penetration
- Confidence building measures for greater investor participation

➤ To address this, SECP in coordination with stakeholders has:

- Undertaken a holistic review of the Companies Ordinance, 1984, culminating into issuance of new Company Law
- Launched investor awareness and education programs to increase number of existing investors and familiarize them with risks, opportunities, rights and responsibilities
- Introduced measures to improve doing business environment in the country



Major Reforms in recent past and in process

- **New Company Law** has been introduced
- Concept of **Limited Liability Partnership** is being introduced
- Modernization of the functions and improving outlook of **Company Registration Offices** of SECP in various cities
- Establishment of **capital market hubs** in various cities for enhancing outreach of mutual funds, stockbrokers, leasing companies, investment banks, modarabas and insurance sector to encourage investors in remote areas. First hub established in Abbottabad - Investors to benefit from services of the participating entities in a one-stop-shop



Major Reforms in recent past and in process

- Expanding outreach of SECP through establishment of a **CRO at Gilgit Baltistan** and **Facilitation Counters at Sialkot and Abbottabad**
- A number of **guides for investors / stakeholders** have been developed which are available on SECP's website
- **Corporate Database:** The Commission is maintaining comprehensive database of directors and companies in the corporate sector
- A **dedicated helpline desk** exclusively for providing guidance regarding online company registration is being established





THANK YOU