

COMPANIES (AMENDMENT) ORDINANCE, 2002

ORDINANCE C OF 2002

An Ordinance

further to amend the Companies Ordinance, 1984

[Gazette of Pakistan, Extraordinary, Part I 26th October, 2002]

F.No.2(1)/2002-Pub. dated 26-10-2002.---The following Ordinance promulgated by the President is hereby published for general information:--

Whereas it is expedient further to amend the Companies Ordinance, 1984 (XLVII of 1984), for the purposes hereinafter appearing;

And whereas the President is satisfied that circumstances exist which render it necessary to take immediate action;

Now, therefore, in pursuance of the Proclamation of Emergency of the Fourteenth day of October, 1999, and the Provisional Constitution Order No. 1 of 1999, read with the Provisional Constitution (Amendment) Order No.9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:-

1. Short title and commencement. ---(1) This Ordinance may be called the Companies (Amendment) Ordinance, 2002.

(2) It shall come into force at once.

2. Amendments. ---The Companies Ordinance, 1984 (XLVII of 1984), is hereby amended to the extent and in the manner specified in column (3) of the Schedule below, namely:--

THE SCHEDULE (1-8)

S. No.	Section	Amendments
(1)	(2)	(3)
1.	2.	In subsection (1),-
		(a) after clause (6), the following new clause shall be inserted, namely:-
		"(6A) "Commission" means the Securities and Exchange Commission of Pakistan established under section 3 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);" and
		(b) for clause (15A) the following shall be substituted, namely:-
		"(15A) "financial institution" includes,-
		(a) a company or an institution whether established under any special enactment and operating within or outside Pakistan which transacts the business of banking or any associated or ancillary business through its branches;
		(b) a modaraba, leasing company, investment bank, venture capital company, financing company, housing finance company, a non-banking finance company; and
		(c) such other institution or companies authorised by law to undertake any similar business, as the Federal Government may, by notification in the official Gazette, specify for the purpose;"
2.	15.	In subsection (1), for the words "seven" and "two" the words "three" and "one", shall, respectively, be substituted.
3.	19.	In subsection (1), for clause (c) the following shall be

		substituted, namely:-
		"(c) signed by each subscriber, who shall add his present name in full, his occupation and father's name or, in the case of a married woman or widow, her husband's or deceased husband's name in full, his nationality and his usual residential address and such other particulars as may be prescribed, in the presence of a witness who shall attest the signature and shall likewise add his particulars; and"
4.	27.	For clause (c) the following shall be substituted, namely:
		"(c) signed by each subscriber, who shall add his present name in full, his occupation and father's name or, in the case of a married woman or widow, her husband's or deceased husband's name in full, his nationality and his usual residential address and such other particulars as may be prescribed, if the presence of a witness who shall attest the signature and shall likewise add his particulars; and"
5.	47.	(a) In the marginal heading for the word "seven" the word "three" shall be substituted;
		(b) after the word "company" occurring for the second time, the words "other than a single member company" shall be inserted; and
		(c) for the word "seven" occurring twice, the word "three" shall be substituted.
6.	73.	In subsection (1),-
		(a) in clause (a), for the commas and words ", the name, father's name or in the case of a married woman, her husband's or deceased husband's name, address and occupation" the words "and such particulars as may be prescribed" shall be substituted; and
		(b) in clause (c), in sub-clause (i), for the words and commas "the name, father's name and in the case of a married woman, her husband's or deceased husband's name, address and occupation" the words "such particulars as may be prescribed" shall be substituted.
7.	78.	In subsection (2), for the words "two" and "fifty", the words "twenty" and "one thousand" shall, respectively, be substituted.
8.		After section 78, amended as aforesaid, the following new section shall be inserted, namely:-
		"78-A. <u>Appeal against refusal for registration of transfer.</u> ---(1) The transferor or transferee, or the person who gave intimation of the transmission by operation of law, as the case may be, may appeal to the commission against any refusal of the company to register the transfer or transmission, or against any failure on its part, within the period referred to in subsection (1) of section 78 either to register the transfer or transmission or to send notice of its refusal to register the same.
		(2) An appeal to the commission under subsection (1) may be preferred--
		(a) In case the appeal is against the refusal to register a transfer or transmission, within two months of the receipt by him of the notice of refusal; and
		(b) In case the appeal is against the failure referred to in subsection (1) within two months from the expiry of the period referred to in subsection (1) of section 78.
		(3) The commission shall, after causing reasonable notice to be given to the company and also to, the transferor and the transferee or, as the case may require, to the person giving intimation of the

		transmission by operation of law and the previous owner, if any, and giving them a reasonable opportunity to make their representation, may, by an order in writing, direct either that the transfer or transmission shall be registered by the company or that it need not be registered by it and in the former case, the company shall give effect to the decision within fifteen days of the receipt of the order.
		(4) Before making an order under subsection (3) on an appeal against any refusal of the company to register any transfer or transmission the commission may require the company to disclose to it the reasons for such refusal.
		(5) The Commission may, in its aforesaid order, give such incidental and consequential directions as to the payment of costs or otherwise as it deems fit.
		(6) If default is made in giving effect to the order of the commission within the period specified in ,subsection (3), every director and officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees, for every day after the first during which the default continues."

SCHEDULE (9-23)

9.	84.	In subsection (1), in the proviso, in clause (b), the commas and words", not exceeding ten percent., or a higher rate fixed by the Authority," shall be omitted.
10.	131.	(a) In subsection (1), for the word "Court", occurring twice, the word "Commission" shall be substituted;
		(b) in subsection (2), for the word "Court" the word "Commission" shall be substituted; and
		(c) in subsection (3), for the word "Court" the word "Commission" shall be substituted.
11.	157.	After subsection (12), the following new subsection shall be added, namely:
		(13) The provisions of this section shall not apply to a public company which converts itself from a private company after one year of incorporation."
12.	158.	In subsection (1),-
		(i) for the word "six", the word "four" shall be substituted; and
		(ii) in the proviso, for the word "ninety" the word "sixty" shall be substituted; and
		(b) in subsection (4),-
		(i) in clause (a), for the words "ten" and "twenty" the words "twenty" and "fifty" shall, respectively, be substituted; and
		(ii) in clause (b), for the words "five" and "two" the words "ten" and "five" shall, respectively, be substituted
13.	160.	(a) In subsection (2),-
		(i) in clause (a),-
		(a) after the word "public", the word "listed " shall be inserted;
		(b) for the word "three" the word "ten" shall be substituted; and
		(c) the word "and", at the end, shall be omitted;
		(ii) in clause (b),-
		(a) for the words "a private" the words "any other" shall be substituted ; and
		(b) for the full stop, at the end the semicolon and word "; and" shall be substituted and thereafter the following

		new clause shall be added, namely:-
		"(c) in the case of a single member company, jingle member present in person or by proxy"; and
		(b) in subsection (8),- -
		(i) in clause (a), for the word "twenty" the word "fifty" shall be substituted; and
		(ii) in clause (b), for the word "five" the word "tin" shall be substituted.
		After section 160 amended as aforesaid, the following new section shall be inserted, namely:
		"160-A. <u>Circumstances in which proceeding of a general meeting may be declared invalid.</u> ---The Court may, on a petition by members having not less than ten percent. of the voting power in the company that the proceedings of a general meeting be declared invalid by reason of any material defect or omission in the notice or irregularity in the proceedings of the meeting which prevented members from using effectively their rights, declare such proceedings or part thereof invalid and direct holding of a fresh general meeting:
		Provided that the petition shall be made within thirty days of the impugned meeting."
15.	161.	Subsection (8) shall be omitted.
16.	170.	(a) In the marginal heading, for the word "registrar" the word "Commission" shall be substituted:
		(b) in subsection (1),-
		(i) for the word "registrar", occurring thrice, the word "Commission" shall be substituted; and
		(ii) for the word "his" the word "its" shall be substituted; and
		(c) in subsection (2), for the word "registrar" the word "Commission" shall be substituted.
17.	171.	(a) In the marginal heading, for the word "registrar" the word "Commission" shall be substituted; and
		(b) for the word "registrar" the word "Commission" shall be substituted.
18.	173.	In subsection (1), after the word and full stop "books" at the end, the following shall be inserted, namely:-
		"A copy of the minutes of meeting of the Board of Directors shall be furnished to every director within fourteen days of the date of meeting."
19.	174.	For section 174 the following shall be substituted, namely:-
		"174. <u>Minimum number of directors of a company.</u> ---(1) Notwithstanding anything contained in any other law for the time being in force,-
		(a) every single member company shall have at least one director;
		(b) every other private company shall have not less than two directors; and
		(c) every public company other than a listed company shall have not less than .three directors,
		appointed and elected in the manner provided in this Ordinance.
		(2) Every listed company shall have not less than seven directors to be elected in a general meeting in the manner provided in this Ordinance."
20.	178.	After subsection (5), the following new subsection shall be added, namely:
		"(6) The directors of a company not having share capital shall be elected by members of the company in general meeting in the manner as provided in articles of association of the company."
21.	181.	In the proviso; for the words "in favour of such a

		resolution is not less than" the words "against it is equal to or exceeds" shall be substituted.
22.	183.	In clause (a),-
		(i) the words "by the Pakistan Industrial Credit and Investment Corporation Limited or" shall be omitted; and
		(ii) the words "the said Corporation or" shall be omitted.
23.	184.	(a) For subsection (1) the following shall, be substituted, namely:

SCHEDULE (23-36)

23.	184.	(a) For subsection (1) the following shall, be substituted, namely:
		"(1) No person shall be appointed or nominated as a director or chief executive of a company or represent as holding such office, nor shall any person describe or name any other person as a director or proposed director or chief executive or proposed chief executive of any company, unless such person or such other person has given his consent in writing for such appointment or nomination; and
		(b) For subsection (2) the following shall be substituted, namely:
		"(2) Within fourteen days from the date of appointment or nomination, as the case may be, the company shall file with the registrar a list of persons who have consented to act as director or chief executive of the company alongwith their consent to do so in the prescribed form."
24.	187.	In clause (h), for the full stop, at the end, a semicolon shall be substituted and thereafter the following new clauses, shall be added, namely:
		"(i) has been declared by a Court of competent jurisdiction as defaulter in repayment of loan to a financial institution, exceeding such amount as may be notified by the Commission from time to time; and
		(j) is member of a Stock Exchange engaged in the business of brokerage, or is a spouse of such member:
		Provided that clauses (i) and (j) shall be applicable only in case of a listed company."
25.	193.	In subsection (2), for the words "twice in a year" the words "once in each quarter of a year" shall be substituted.
26.	195.	In subsection (6), after the word "sum", the words "with mark-up not less than the borrowing cost of the lending company" shall be inserted.
27.	196.	(a) In subsection (2),-
		(i) in clause (i) the word "and", at the end, shall be deleted;
		(ii) in clause (j),
		(a) the words "exceeding two thousand rupees" shall be omitted; and
		(b) for the words "of the value exceeding one hundred thousand rupees" the words "in accordance with the limits as prescribed by the Commission from time to time" shall be substituted; and
		(c) in the proviso, for the full stop at the end, a semi-colon shall be substituted; and
		(iii) after clause (j), amended as aforesaid, the following new clauses shall be added, namely:-
		"(k) to undertake obligations under leasing contracts

		exceeding one million rupees:
		(l) to declare interim dividend; and
		(m) having regard to such amount as may be determined to be material (as construed in the Generally Accepted Accounting Principles) by the Board,
		(i) to write off bad debts, advances and receivables;
		(ii) to write off inventories and other assets of the company; and
		(iii) to determine the terms of and the circumstances in which a law suit may be compromised and a claim or right in favour of a company may be released, extinguished or relinquished", and
		(b) in subsection. (4), for the word "five" the words "one hundred" shall be substituted.
28.		After section 204, the following new section shall be inserted, namely:
		"204-A. <u>Certain companies to have secretaries.</u> ---A listed company shall have a whole time secretary and a single member company shall have a secretary possessing such qualifications as may be prescribed."
29.	205.	In subsection (1),-
		(i) for the words, comma, colon and dash "the following particulars, that is to say:- " the words and full stop "such particulars as may be prescribed," shall be substituted; and
		(ii) clauses (a), (b) and (c) shall be omitted.
30.	208.	For section 208, the following shall be substituted, namely:-
		"208. <u>Investments in associated Companies and undertakings.</u> --- (1) A company shall not make any investment in any of its associated companies or associated undertaking except under the authority of a special resolution which shall indicate the nature, period and amount of investment and terms and conditions attached thereto:
		Provided that the return on investment in the form of loan shall not be less than the borrowing cost of investing company.
		<u>Explanation.</u> ---The expression 'investment' shall include loans, advances, equity, by whatever name called, or any amount which is not in the nature of normal trade credit.
		(2) No change in the nature of an investment or the terms and conditions attached thereto shall be made except under the authority of a special resolution.
		(3) If default is made in complying with the requirements of this section, every director of a company who is knowingly and wilfully in default shall be liable to fine Which may extend to one million rupees and in addition, the directors shall jointly and severally reimburse to the company any loss sustained by the company in consequence of an investment which was made without complying with the requirements of this section.
		(4) This section shall not apply to-
		(a) a banking company;
		(b) any other financial institution approved by the Commission;
		(c) a private company which is not subsidiary of a public company; and
		(d) a company whose principal business is the acquisition of shares, stock, debentures or other securities."
31.	224.	In subsection (2),-

		(a) for the words "Federal Government" the word "Commission" shall be substituted; and
		for the words "registrar or the Authority" the word "Commission" shall be substituted.
32.	230.	In subsection (7),-
		(i) in clause (a) for the words "ten", "twenty" and "two" the words "twenty", "fifty" and "five" shall, respectively, be substituted; and
		(ii) in clause (b) for the word "five" the word "ten" shall be substituted.
33.	233.	(a) In subsection (1),-
		(i) for the word "six" the word "four" shall be substituted, and
		(ii) in the proviso, for the words "Authority" and "three" the words "Commission" and "two" shall, respectively, be substituted.
34.	234.	(a) In subsection (2), in clause (i), after the words "listed company", the words "and a private and non-listed public company which is subsidiary of a listed company" shall be inserted;
		(b) in subsection (3),-
		(i) the comma and words ",in the case of a listed company" shall be omitted;
		(ii) in clause (i), for the word and semi-colon "Authority:" the words and semi-colon "Commission; and" shall be substituted;
		(iii) for clause (ii) the following shall be substituted, namely:-
		"(ii) in case of a listed company,-
		(a) a statement of changes in equity and cash flow statement shall form part of the balance-sheet and profit and loss account; and
		(b) accounting policies shall be stated and, where there is any change in such policies, the auditor shall report whether he agrees with the change."; and
		(c) clause (iii) shall be omitted.
35.	235.	(a) In subsection (2) in the proviso, for the full stop, at the end, a colon shall be substituted and thereafter the following proviso shall be added, namely:-
		"Provided further that incremental depreciation arising out of revaluation of fixed assets may be charged to surplus on revaluation of fixed assets account.";
		(b) for subsection (4) the following shall be substituted, namely:-
		"(4) After revaluation as aforesaid, depreciation on the assets so revalued shall be provided with reference to the value assigned to such assets before revaluation and surplus on revaluation may be amortized according to life of the assets."
36.	236.	(a) In subsection (4),-
		(i) in clause (a), for- the words "ten", "twenty" and "two" the words "twenty", "fifty" and "five" shall, respectively, be substituted; and
		(ii) in clause (b), for the word "five" the word "ten" shall be substituted; and
		(b) after subsection (4), the following new subsection shall be added, namely:-
		"(5) The directors of a holding company required to prepare consolidated financial statements under section 237 shall make out and attach to consolidated financial statements, a report with respect to the state of group's affairs and all provisions of subsections (2), (3) and (4) shall apply to such report as if for the word "company" appearing in these subsections the word "holding

	company" were substituted."
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SCHEDULE (37-46)

37.	237.	For section 237 the following shall be substituted, namely:
		"237. <u>Consolidated financial statements.</u> ---(1) There shall be attached to the financial statements of a holding company having a subsidiary or subsidiaries, at the end of the financial year at which the holding company's financial statements are made out, consolidated financial statements of the group presented as those of a single enterprise and such consolidated financial statements shall comply with the disclosure requirement of the Fourth Schedule and International Accounting Standards notified under subsection (3) of section 234.
		(2) Where the financial year of a subsidiary precedes the day on which the holding company's financial year ends by more than three months, such subsidiary shall make an interim closing on the day on which the holding company's financial year ends, and prepare financial statements for consolidation purposes.
		(3) Every auditor of a holding company appointed under section 252 shall also report on consolidated financial statements and exercise all such powers and duties as are vested in him under section- 255.
		(4) All interim financial statements of a subsidiary as required under subsection (3) shall be reviewed by the auditors of that subsidiary appointed under section 252 who shall report on such financial statements in the prescribed form.
		(5) There shall be disclosed in the consolidated financial statements,-
		(a) any qualifications contained in the auditors' reports on the accounts of subsidiary or subsidiaries for the financial year ending with or during the financial year of the holding company; and
		(b) any note or saving contained in such accounts to call attention to a matter which, apart from the note or saving, would properly have been referred to in such a qualification, in so far the matter which is the subject of the qualification or note is not covered by the holding company's own accounts and is material from the point of view of its members.
		(6) Every consolidated financial statement shall be signed by the same persons by whom the individual balance sheet and the profit and loss account or income and expenditure account of the holding company are required to be signed under section 241.
		(7) All provisions of sections 233, 242, 243, 244 and 245 shall apply to a holding company required to prepare consolidated financial statements under this section as if for the word "company" appearing in these sections, the words "holding company" were substituted.
		(8) The Commission may, on an application or with the consent of the directors of holding company, direct that in relation to any subsidiary, the provisions of this section shall not apply to such extent only as may be specified in the direction.
		(9) If a holding company fails to comply with any requirement of this section, every officer of the holding company shall be punishable with fine which may

		extend to fifty thousand rupees in respect of each offence unless he shows that he took all reasonable steps for securing compliance by the holding company of such requirements and that the non-compliance or default on his part was not wilful and intentional."
38.		In subsection (1), for the words "five" and "three" the words "three" and "two" shall, respectively, be substituted.
39.	245.	(a) In the marginal heading, for the words "Half-yearly" the word "Quarterly" shall be substituted; and
		(b) in subsection (1),-
		(i) in clause (a), for the words "two months", "first half and "half-year" the words "one m month", "first, second and third quarter" and "quarter" shall, respectively, be substituted; and
		(ii) in clause (b), for the words "half-yearly" the word "quarterly" shall be substituted.
40.	252.	(a) In subsection (1), for the full stop, at the end, a colon shall be substituted and thereafter the following proviso shall be added, namely:
		"Provided that an, auditor or auditors appointed in a general meeting may be removed before conclusion of the next annual general meeting through a special resolution.";
		(b) in subsection (3), in the proviso, in clause (b), for the full stop, at the end, a colon shall be substituted and thereafter the following new proviso shall be added, namely:
		"Provided further that the auditors appointed in annual general meeting shall not be removed during their tenure except through a special resolution."; and
		(c) in subsection (6), for the word "Authority" the words and comma "or where auditors are removed by the company, the Commission" shall be substituted.
41.	254.	In subsection (3),-
		(i) in clause (d), the word "and" shall be omitted;
		(ii) in clause (e), for the full stop at the end, the semi-colon and word "; and" shall be substituted; and
		(iii) after clause (e), amended as aforesaid, the following new clause shall be added, namely:-
		"(f) a person or his spouse or minor children, or in case of a firm, all partners of such firm who holds any shares of an audit client or any of its associated companies:
		Provided that if such a person holds shares prior to his appointment as auditor, whether as an individual or a partner in a firm the fact shall be disclosed on his appointment as auditor and such person shall disinvest such shares within ninety days of such appointment."
42.	259.	For the words "two thousand rupees" the words "fifty thousand rupees and in the case of continuing default to a further fine which may extend to two thousand rupees for every day after the first during which the default continues" shall be substituted.
43.	260.	(a) In subsection (1), for the word "two" the words "one hundred" shall be substituted; and
		(b) in subsection (2), for words "six months" and "two" the words "one year" and "one hundred" shall, respectively, be substituted.
44.	305.	(a) In clause (g), the word "or", at the end, shall be omitted;
		(b) in clause (h), for the full stop, at the end, the semi-colon and word "; or" shall be substituted; and
		(c) after clause (h) amended as aforesaid, the following

		new clause shall be added, namely:
		"(i) if the company ceases to have a member."
45.	321.	In subsection (2), for the full stop, at the end, a colon shall be substituted and thereafter the following proviso shall be added, namely:
		"Provided that no person shall be appointed as liquidator of more than three companies at one point of time."
46.	323.	After subsection (4), the following new subsection shall be added, namely:
		"(5) No remuneration shall be payable to an official liquidator who fails to complete the winding-up proceedings within the prescribed period."

SCHEDULE (47-57)

47.	364.	After subsection (7), the following new subsection shall be added, namely;
		"(8) No remuneration shall be payable to a liquidator who fails to complete the winding up proceedings within the prescribed period."
48.	470.	(a) In subsection (1), the words "or such smaller fees" shall be omitted; and
		(b) in subsection (2), for the words "Federal Government" the word "Commission" shall be substituted.
49.	474.	In subsection (1) in clause (a), after the word "the", the words "Commission or the" shall be inserted.
50.	476.	For subsection (1) the following shall be substituted, namely:
		"(1) Where a fine (other than a fine in addition to, or in lieu of, imprisonment) is provided for any offence, contravention of, or default
		in complying with, any of the provisions of this Ordinance or a directive of the Commission or the registrar or other authority empowered to issue a directive under any provision of this Ordinance, it shall be adjudged and imposed:-
		(a) where the maximum initial fine provided is less than ten thousand rupees, whether or not there is fine for continuing default, by the officer who is in charge of the registration office in which the company is registered:
		Provided that the Commission and the Registrar shall have concurrent jurisdiction under this clause;
		(b) where the maximum fine provided is ten thousand rupees or more but less than one hundred thousand rupees, or whether or not there is fine for continuing default, or where only fine for continuing default is provided, by the Registrar;
		Provided that the Commission shall have concurrent jurisdiction under this clause; and
		(c) where the maximum fine provided is one hundred thousand rupees or more and whether or not there is fine for continuing default, by the Commission or an officer to whom the Commission has delegated its powers and functions in this behalf'.
51.	484.	In subsection (1), for the full stop, at the end, a colon shall be substituted and thereafter the following proviso shall be inserted, namely:
		"Provided that revision application shall be made to an Appellate Bench of the Commission comprising of not less than two Commissioners and if any Commissioner

		who is included in the Appellate Bench has participated or been concerned in the decision being appealed against, the Chairman shall nominate another Commissioner to sit in the bench to hear that appeal.".
52.	492.	For section 492 the following shall be substituted, namely:-
		"492. <u>Penalty for false statement.</u> ---Whoever in any return, report, certificate, balance sheet, profit and loss account, income and expenditure account, prospectus, offer of shares, books of accounts, application, information or explanation required by or for the purposes of any of the provisions of this Ordinance or pursuant to an order or direction given under this Ordinance makes a statement which is false or incorrect in any material particular, or omits any material fact knowing it to be material, shall be punishable with fine not exceeding one hundred thousand rupees."
53.	495.	In subsection (1), for the words "five" and "one hundred" the words "fifty" and "two thousand" shall, respectively, be substituted.
54.	497.	For the words "five" and "one" the words "fifty" and "five" shall, respectively, be substituted.
55.	498.	For the words "one" and "fifty" the words "fifty" and "five hundred" shall, respectively, be substituted.
56.	506.	In subsection (2), for the words "two" and "one" the words "fifty" and "five" shall, respectively, be substituted.
57.		For the word "Authority", whenever occurring, the word "Commission" shall be substituted.