

ORDINANCE I OF 2009

AN ORDINANCE

to amend the Companies Ordinance, 1984

WHEREAS it is expedient to amend the Companies Ordinance, 1984 (XLVII of 1984) to provide for the listed companies to buy back their shares and retain the repurchased shares as treasury shares and reissue them at appropriate time.

AND, WHEREAS the National Assembly is not in session and the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 89 of the Constitution of the Islamic Republic of Pakistan, the President is pleased to make and promulgate the following Ordinance.

1. Short title and commencement.- (1) The Ordinance may be called the Companies (Amendment) Ordinance, 2009.

(2) It shall come into force at once.

2. Substitution of section 95A, Ordinance XLVII of 1984.- In the Companies Ordinance, 1984 (XLVII of 1984), for section 95A, the following shall be substituted, namely:-

"95A. Power of a company to purchase its own shares.--(1) Notwithstanding anything contained in this Ordinance or any other law for the time being in force or the memorandum and articles, a listed company may, subject to the provision of this section and the regulations prescribed by the Commission in this behalf, purchase its own shares (hereinafter in this section referred to as "purchase").

(2) The shares purchased by the company may, in accordance with the provisions of this section and the regulations, either be cancelled or held as treasury shares.

(3) The shares held by the company as treasury shares shall, as long as they are so held, in addition to any other conditions as may be prescribed, be subject to the following conditions, namely:--

- (a) the voting rights of these shares shall remain suspended; and
- (b) no cash dividend shall be paid and no other distribution, whether in cash or otherwise of the company's assets, including any distribution of assets to members on a winding up shall be made to the company in respect of these shares:

Provided that nothing in this subsection shall prevent,--

- (i) an allotment of shares as fully paid bonus shares in respect of the treasury shares; and
- (ii) the payment of any amount payable on the redemption of the treasury shares, if they are redeemable.

(4) The board of directors shall recommend the purchase to the member. The Decision of the board of directors shall clearly specify the number of shares proposed to be purchased, purpose of purchase i.e. cancellation or holding the shares as treasury shares, the purchase price, period within which purchase shall be made, source of funds, justification for the purchase and effect on the financial position of the company.

(5) The purchase shall be made only under the authority of a special resolution.

(6) The purchase shall be made a period prescribed by the regulation.

(7) The proposal of the board of directors to purchase shares shall be communicated to the Commission and to the stock exchange on which shares of the company are listed on conclusion of the board meeting.

(8) The purchase shall always be made in cash and shall be out of the distributable profits or reserves specifically maintained for the purpose.

(9) The purchase shall be made either through a tender offer or through stock exchange as prescribed by the regulations.

(10) The company may dispose of the treasury shares as prescribed by the regulations.

(11) Where a purchase has been made under this section, the company shall maintain a register of shares so purchased and enter therein the following particulars, namely:--

- (a) number of shares purchased;
- (b) consideration paid for the shares purchased;
- (c) mode of purchase;
- (d) the date of cancellation or re-issuance of such shares;
- (e) number of bonus shares issued in respect of treasury shares; and
- (f) number and amount of treasury shares redeemed, if redeemable.

(12) Whosoever contravenes any provision of this section or any regulations framed hereunder shall be punishable with fine which may extend to thirty million rupees and shall also be individually and severally liable for any and all losses or damages arising out of such contravention."
