

**Concept Paper  
on  
New Provisions  
for  
Inclusion  
in the  
Draft Companies Bill, 2016**

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## **1. INTRODUCTION**

- 1.1** The Securities and Exchange Commission of Pakistan (“Commission”) while envisaging its statutory mandate and being cognizant of the fact that in order to have a dynamic and progressive economy, the compatibility of laws with respect to the corporate sector in general and the company law in specific is inevitable. Before focusing on the proposed concepts, it is of utmost importance to have an overview of the company law in Pakistan.
- 1.2** The Companies Ordinance, 1984 (“Ordinance”) which replaced the Companies Act, 1913 was promulgated on October 8, 1984 and most of its provisions were made operational on January 1, 1985. During the subsequent period of thirty-two years of its operations, various practical difficulties were noticed from time to time and a number of improvements particularly related to new developments were suggested.
- 1.3** Since independence the Companies Act, 1913 was adopted as Company Law of the country. In October 1984, the Companies Ordinance (“Ordinance”) replaced the said law with the motive to “consolidate and amend the law relating to companies and certain other associations for the purpose of healthy growth of the corporate enterprises, protection of investors, creditors and promotion of investment in the country”.
- 1.4** In order to encourage the growth of industrialization and to promote the corporatization, the Ordinance was amended during the years 1991, 1999 and 2002. Since the amendments were in piecemeal and these being narrowly focused, resulted in a disconnect or overlapping in the regulatory framework which demanded for a strong regulatory mechanism and greater disclosure to safeguard the interest of members, creditors and other stakeholders. Thus, there was a need to carefully examine the existing legal framework meant for efficient regulation of the entire corporate sector. During the year 2002 the regulation of non-banking finance companies (NBFCs) and the insurance industry was also assigned to the SECP.

## **2. DELIBERATION ON DRAFT COMPANIES BILL**

- 2.1** While recognizing the need to meet these challenges, in February 1997 the Federal Government constituted a commission under the Chairmanship of Mr. Justice (Retd.) Shafi ur Rehman. The said commission published its report in the same year and the recommendations made were incorporated in the Companies (Amendment) Act, 1999. However in light of the new developments which took place worldwide, the SECP in the year 2005 constituted a commission called the Company Law Review Commission

("CLRC") under the chairmanship of the former Chief Justice of Pakistan (Mr. Justice (R) Ajmal Mian) and consisting other professionals. The CLRC, after detailed deliberations developed a concept paper which was circulated amongst members its members but due to multiple reasons, the new draft law could not be finalized.

**2.2** In view thereof, the SECP in April 2015 under the leadership of Chairman SECP Mr. Zafar Hijazi, decided to constitute an in-house Committee for the purpose of reviewing/revamping the Ordinance. Apart from the Committee members, two external experts were also engaged in finalization of initial draft law. The Committee completed its assignment within a period of six months and a draft of the Companies Bill was submitted to the Commission.

**2.3** A detailed presentation in this regard was made before the Honorable Finance Minister in September, 2015 and as per directions of the Honorable Minister, the draft law was posted on the Commission's website inviting general public, professional bodies and other stakeholders for seeking their comments. In this connection, consultative sessions were also held in the offices of chambers of commerce and industries throughout Pakistan and round tables arranged in all major cities wherein eminent and senior chartered accountants, lawyers, corporate consultants, professionals, businessmen, company secretaries of leading companies, representatives of professional bodies, financial institutions and other interests were invited to seek their feedback. On the basis of the voluminous feedback received through this process, suitable changes were made in relevant provisions of the draft Bill.

**2.4** A seminar of national level was held at Islamabad whereby the Honorable Finance Minister graciously chaired the occasion as the Chief Guest. Some eminent professionals were invited as speakers of the seminar and certain specific issues of public interest were shared with the audience of the seminar. In light of the proposals, the draft Bill was further amended and as directed by the Honorable Minister, the revised draft Bill was again posted on the Commission website for a period of one month for the purpose of providing another opportunity to the professionals, general public and other stakeholders for seeking their comments. The feedback so received was deliberated by the Commission for possible incorporation in the draft Bill.

### **3. RATIONALE FOR NEW CONCEPTS**

**3.1** In a recent meeting with the Honorable Finance Minister by the Chairman SECP and senior officials, the Chairman SECP briefed the Honorable Minister for Finance on the

draft Bill who directed that provisions relating to Companies Global Register with respect to beneficial owners, duties of the officers of the company to take adequate measures to avoid fraud and money laundering, new concepts relating to free zone companies, real estate companies and agricultural promotion companies should be further deliberated with the stakeholders. The SECP should finalize such provisions after broader consultation and consensus of the stakeholders.

- 3.2** In order to ensure corporate transparency and facilitate meaningful due diligence, SECP proposes to maintain a Companies' Global Register of officers and beneficial owners of the companies having beneficial ownership in local or foreign companies. The information will be reported by the company to the registrar along with the annual return of the company; however for the first time such information will be reported through a special return on a prescribed form within a stipulated time frame. Furthermore, for prevention of fraud and money laundering every officer of the company shall be required to take necessary measures to prevent the commission of fraud and money laundering in the respective company. Any failure on the part of such officer shall be an offence.
- 3.3** The SECP also proposes to introduce provisions regarding certain specialized companies including Free Zone companies, Real Estate Companies and Agricultural Promotion Companies. The free zone companies will cater for carrying out business in Export Processing Zones notified by the Federal Government. The introduction of free zone companies will support Pakistan's future export needs especially in the wake of CPEC which will potentially change the economic landscape of the country. The concept of Free Zone companies is prevalent internationally and successfully attracting foreign investors and investments. At present in Pakistan, the export processing zones and free zones are notified by the Federal Government under the Export Processing Zone Authority Ordinance, 1980 and various exemptions have been granted therein. However, the Companies Ordinance, 1984 did not cater for the concept and there was a need to provide further incentive especially to foreign nationals and entities investing in free zones. Through the proposed provision the foreign nationals shall be exempted from disclosure requirements. Further the SECP will also be able to give concessions with respect to filing requirements under the draft Bill.
- 3.4** Agriculture is the backbone of Pakistan economy and special purpose companies can play a positive role in alleviating the agriculture sector. A concept of agricultural promotion

company is being introduced to provide impetus and support to the rural economy and induce increase in agricultural produce and its management through facilitation of warehousing of agriculture produce, issuance of credible warehouse receipts for agricultural commodity, stock and audit verification etc. Such companies may be established in either in the form of Producer Company or a Collateral Management Company for facilitating the agricultural sector.

**3.5** The companies having principle line of business of real estate projects i.e. development and construction of residential or commercial buildings and compounds in order ensure protection of the investors will be required to take adequate measures inter alia maintenance of escrow accounts and additional disclosure requirements. Before taking advance from the general public NOC from the respective authorities shall be required and advertisement in print and electronic media shall be made after fulfilling certain requirements and permission from the SECP in this respect. It is conceived that in order to bring new real estate companies and promote the business there is an impending need to increase investor confidence intending to invest in real estate ventures.

**3.6** The proposed concepts besides posting on the website of the SECP, for soliciting stakeholder's opinion and feedback will be shared with the Institute of Chartered Accountants of Pakistan, the Institute of Cost and Management Accountants of Pakistan, Federation of Pakistan Chambers of Commerce and Industry, the chambers of commerce and industry across Pakistan and leading corporate lawyers and consultants in the country.

## **WAY FORWARD**

The decision with respect to inclusion of the proposed new concepts in the draft Companies Bill, 2016 will be finalized only after taking into consideration, the feedback received from the stakeholder's and by holding a consultative session for reaching consensus in this behalf. The SECP encourages and appreciates any suggestions in this regard.

#### 4. PROPOSED PROVISIONS

S.No.	Provisions
1.	<p><b>Companies' Global Register of Beneficial Ownership.-</b> (1) Every officer or Beneficial Owner of the company shall report to the company regarding his beneficial ownership in any company whether local or outside Pakistan, on a prescribed form within 30 days of holding such position.</p> <p>(2) The company shall submit all the aforesaid information received by it during the year to the registrar along with the annual return.</p> <p>(3) Any equity investment made by any company incorporated in Pakistan in any other company or body corporate, local or foreign, shall also be reported to the registrar along with the annual return.</p> <p>(4) All the above information shall be first time reported to the registrar through a special return on a prescribed form within 60 days from the commencement of this Act.</p> <p>(5) A person guilty of an offence under this section shall be liable to a fine of level 3 on the standard scale.</p> <p>(6) The Commission shall keep record of the information in a Companies' Global Register of Beneficial Ownership.</p>
2.	<p><b>Free Zone Company.-</b> (1) A company incorporated for the purpose of carrying on business in the export processing zone or an area notified by the Federal Government as free zone shall be eligible to such exemptions from the requirements of this Act as may be specified in schedule _____.</p> <p>(2) 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 incorporated under sub-section (1), who are foreign nationals unless such disclosure of information is authorized by the company in writing.</p> <p>Provided that the restriction of non-disclosure contained in this section shall not apply to the revenue authorities collecting tax, duties and levies or requirement or obligation under international law, treaty or commitment of the Government.</p> <p>(3) A company formed for the purposes stated in sub-section (1) may 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.</p> <p>(4) A Free Zone Company shall pay the annual renewal fee as specified in _____</p>

	Schedule.
3.	<p><b>Acceptance of advances by real estate companies:</b> (1) Notwithstanding anything contained in this Act or any other law, a company shall not engage in the business of real estate project unless its principal line of business is development of real estate projects.</p> <p>(2) A company undertaking a real estate project shall at all times comply with the following terms and conditions, namely:-</p> <p>(a) A real estate company shall not;</p> <p>(i) announce any real estate project;</p> <p>(ii) make any publication or advertisement of real estate projects; and</p> <p>(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,</p> <p>unless it has obtained the approval of the Commission, and all necessary approvals, permissions, NOCs etc. of the concerned authorities required as per applicable general, special and local laws, having jurisdiction over area under which the real estate project is being developed or undertaken to the satisfaction of the Commission and subject to such additional disclosure requirements as may be notified;</p> <p>(b) 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;</p> <p>(c) it shall maintain and preserve such books of account, records and documents in the manner as may be specified;</p> <p>(d) it shall not involve in any unfair trade practices;</p> <p>(e) 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 and shall be maintained in such form and manner as may be specified which may also provide for the specialized management of escrow accounts through an independent entity;</p> <p>(f) it shall comply with any directions notified by the Commission and accounting framework as may be notified; and</p> <p>(g) any other term and condition as may be specified.</p> <p>(3) For the purposes of this section the Escrow accounts shall be dedicated exclusively for the carrying out the project and no attachment shall be imposed on the payment of such Escrow accounts for the benefit of creditors of the real estate company.</p>



	<p>(4) The Commission shall provide copy of any returns or information submitted by real estate Company free of cost to the concerned authority, on their request, to enable such authority to regulate real estate project under its jurisdiction in accordance with the applicable laws.</p> <p>(5) The conditions laid down under this section shall be in addition to and not in derogation of requirement of law and concerned authority under whose jurisdiction the project is being undertaken by the real estate company shall continue to exercise its authority in a manner provided in the relevant law.</p> <p>(6) Any person who contravenes the provisions of this section shall be guilty of an offence which is liable to a penalty of level 3 on the standard scale.</p> <p><b>Explanation I:-</b> For the purposes of this section the expressions “real estate project” shall include projects for the development and construction of residential or commercial buildings or compounds and shall not include other construction projects.</p> <p><b>Explanation II:-</b> For the purposes of this section the expression “authority” shall include authority created or prescribed under any law which has powers to give permission for planning and development of real estate project in specific area</p>
4.	<p><b>Agriculture Promotion Companies.-</b> (1) Notwithstanding anything contained in this Act or any other law for the time being in force, 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 under this section in such form and manner and subject to such terms and condition and limitation as may be specified.</p> <p><b>Explanation.-</b> For the purpose of this section:</p> <p>(a) “Agriculture Promotion Company” includes a Producer Company or a Collateral Management Company involved in Produce or any other company or class of companies or corporate body or any other entity as the Federal Government may, by notification in the official Gazette specify as Agriculture Promotion Company under this section;</p> <p>(b) “Produce” means-</p> <p>(i) produce of farmers, arising from agriculture (including animal husbandry, forest products, re-vegetation, bee raising and farming plantation products), or from any other activity or service which promotes the farming business; or</p> <p>(ii) any product resulting from any of the above activities, including by-products of such products;</p> <p>(iii) any activity which is intended to increase the production of anything referred to in above sub-clauses or improve the quality there of;</p>

(2) Producer Company means any company, with or without share capital, formed under this section by farmers and engaged in any activity connected with or related to any Produce including the following matters:

- (i) production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of produce of the Members or import of goods or services for their benefit;
- (ii) processing including preserving, drying, distilling, brewing, canning and packaging of produce of its members;
- (iii) rendering technical services, consultancy services, training research ;and development and all other activities for the promotion of the interests of its Members;
- (iv) arranging insurance of produce; and
- (v) financing of procurement, processing, marketing, extending of credit facilities including microfinance subject to such term and condition as may be specified, or any other financial services to its members;

(3) Every Producer Company shall deal primarily with the produce of its Members for carrying out any of its activities.

(4) For the purposes of this section, member of a Producer Company means farmers as promoters and sponsors of a Producer Company and farmers admitted to membership after registration in accordance with requirements as specified in the regulations.

(5) Collateral Management Company means any company formed under this section to engaged in the activity of managing produce as collateral, including but not limited to the following matters:

- (i) warehousing, i.e. provision of quality storage and preservation services for a range of agricultural commodities;
- (ii) issuance of credible warehouse receipts for agricultural commodity financing; and
- (iii) stock audit and verification services.

(6) If an Agriculture Promotion Company or Collateral Management Company or Producer Company or their members indulges in any activity which is prejudicial to the interests of farmers, members, lending institutions, commodity exchange, consumers, or other stakeholders, shall be liable to a penalty of level 3 on the standard scale.

(7) Any dues outstanding against agriculture promotion company under this section shall be recoverable as arrears of land revenue.

	<p>(8) Notwithstanding any provision of this section the Government or any institution or authority owned and controlled by the Government may form an Agriculture Promotion Company.</p>
5.	<p><b>Payment against supply of agricultural produce.-</b> (1) Notwithstanding anything contained in section 457, every company acquiring agricultural produce directly or through its agents from the farmers shall make the payment to them against supply of such produce promptly and not later than ninety days from the date of acquisition.</p> <p>(2) If the company fail to make the payment within the period provided in sub-section (1) the amount due to the farmer shall be payable with the mark-up at the prevailing bank rate.</p> <p>(3) Whoever contravenes or authorizes or permits the contravention of this section shall be liable to a penalty of level 3 on the standard scale.</p>
6.	<p><b>Prevention of offences relating to fraud and money laundering.-</b> (1) Every officer of a company shall endeavor to prevent the commission of any fraud or money laundering with respect to affairs of the company and shall take adequate measures for the purpose.</p> <p>(2) Whosoever fails to comply with the provisions of this section 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, unless such officer has taken reasonable measures within his capacity to prevent commission of such offense.</p>
7.	<p><b>Power to give exemptions by the Federal Government.-</b> Notwithstanding anything contained in this Act or any other law, the Federal Government may by notification in the official gazette exempt companies under section 454, 456 and 457 from any provisions which relates to the legislative competence of the Parliament.</p>
8.	<p><b>Disclosure of interest in securities.-</b> (1) The Commission may direct any person to disclose:</p> <p>(a) full details, and the basis, of his interest in listed securities and of the circumstances that give rise to that interest;</p> <p>(b) the name address and any other particular of each other person who has a relevant interest in any of the said securities and interests together with full details of:</p> <p>(i) the nature and extent of that interest; and</p> <p>(ii) the circumstances that give rise to the other person's interest; and</p> <p>(c) the name address and any other particulars of each person who has given him instructions about:</p> <p>(i) the acquisition or disposal of the securities or interests; or</p>

- (ii) the exercise of any voting or other rights attached to the securities or interests; or
  - (iii) any other matter relating to the securities or interests;
- (d) the name address and any other particulars of each person to whom he has given instructions about:
- (i) the acquisition or disposal of the securities or interests; or
  - (ii) the exercise of any voting or other rights attached to the securities or interests; or
  - (iii) any other matter relating to the shares or interests

together with full details of those instructions, including the date or dates on which they were given.

(2) The Commission may direct a person whose name is disclosed under sub-section (1) to make similar disclosures contained therein.

(3) The directive under sub-section (1) may be given by the Commission;

- (a) on its own motion;
- (b) on request of the company or body corporate which has issued the securities;
- (c) on request of a member, holding not less than ten percent of the securities of such company or body corporate which has issued the securities;
- (d) an exchange on which the securities are listed or are in the process of being listed; and
- (e) on a request received from any law enforcement agency or other department of the Federation or Provincial Government.

(4) Any person who refuses or fails to make a disclosure as required under this section, or provides false or misleading information, or hinders or obstructs another person from making the required disclosure commits an offence and shall be punishable with imprisonment for a term which may extend to three years and a fine which may extend to two hundred million rupees or to both, and the court trying the offence may order confiscation and sale of the securities in respect of which a false disclosure was made.